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Motivation, Markets and Client Relations in the British Private Security Industry

An Economic-Sociological Perspective on UK Private Security Company Behaviour in Iraq and Afghanistan 2003-2009

Sebastian Drutschmann, PhD Candidate

For Annika, this and everything else.

Abstract

One persistent concern about the increasingly widespread use of private security companies (PSCs) is that, unlike the state-organized military, PSCs are inherently unreliable and disloyal because they are primarily motivated by profit and only subject to limited controls. Yet if these concerns were valid, one should expect misconduct to be PSCs' default behavioural option. Evidence from UK PSCs operating in Iraq and Afghanistan from 2003-2009, however, suggests that misconduct was relatively rare, given how widely PSCs were used in both theatres of operation. Indeed, PSCs are frequently lauded for their professionalism and loyalty - particularly by their customers, who arguably have a close view of their behaviour.

The core problem of this thesis is, therefore, the question why misconduct is actually not more prevalent in the UK private security industry (PSI). It argues that the dominant conceptualization of PSC behaviour overemphasises the importance of financial interests in their decision-making. Using Granovetter's concept of embeddedness, this thesis suggests that the social context of PSCs, through institutions, networks and power relationships, shapes their economic actions. In a three-level analysis, it shows how (1) the decision-making processes in individual PSCs, (2) competition in the market for PSC services and (3) the (contractual) relationship between PSCs and their clients reduce the likelihood of misconduct. Rather than being exclusively interested in maximising their corporate profits, PSCs are therefore motivated by a complex amalgam of financial and non-financial interests. This motivation, combined with informal regulatory influence from their labour, market and client relations, causes PSC behaviour to be more restricted than previously acknowledged.

Adopting a qualitative approach and drawing on over fifty semi-structured interviews with UK PSC representatives and employees, their clients, policy-makers and experts as well as on corporate reports, biographies, academic and media research, this thesis traces the key factors that shaped the behaviour of UK PSCs in Iraq and Afghanistan in 2003-2009.

By providing a more nuanced understanding of UK PSC behaviour, this study offers a new approach to PSC regulation. Instead of strict, formal regulation, including intrusive monitoring and strong sanctions, this study demonstrates the advantages of less antagonistic, responsive forms of regulation, which rely on fostering military professionalism in the PSI, on shaping public and private sector demand power in the market for PSC services and on using the relationship dimension of contracting to increase regulatory responsiveness.

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Acknowledgements

When you set sail for Ithaca,
wish for the road to be long,
full of adventures, full of knowledge.
[...]

Ithaca, Konstantinos Petrou Kavafis (1911)

Writing a PhD is in many ways comparable to an Odyssey. You fight Laestrygonians and the occasional Cyclops. Sirens constantly tempting you to stray, but where they sing, there is no home for you. Much of it is pain and loss. Yet, as soon as you get ashore, you tell of the glories of your venture. What fools we all are!

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Und dann ist da Annika. Keine hat unter diesem Machwerk so gelitten wie sie und mir dennoch den Rücken frei gehalten. Danke ist ein viel zu kleines Wort.

Abbreviations

9/11	The terrorist attacks of 11 September 2001
APC	Armored Personnel Carriers
BAPSC	British Association of Private Security Companies
BDS	Bureau of Diplomatic Security
CBO	Congressional Budget Office
CENTCOM	Central Command
CF	Coalition Forces
CoC	Code of Conduct
COIN	Counterinsurgency
COR	Contracting Officer Representative
CRG	Control Risks Group
CRS	Congressional Research Service
CPA	Coalition Provisional Authority
CSR	Corporate Social Responsibility
CWC	Commission on Wartime Contracting
DoD	Department of Defense
DoJ	Department of Justice
DoS	Department of State
DS	Bureau of Diplomatic Security
DSL	Defence Systems Limited
EO	Executive Outcomes
EI	Edinburgh International
FAR	Federal Acquisition Agency
FCO	Foreign and Commonwealth Office

FM	Field Manual
FY	Fiscal Year
GAO	Government Accountability Office
ICoC	International Code of Conduct for Private Security Service Providers
ICRC	International Committee of the Red Cross
IO	International Organization
IPOA	International Peace Operations Association
ITAR	International Transfer of Arms Regulation
KBR	Kellogg, Brown & Root
MEJA	Military Extraterritorial Jurisdiction Act
MoA	Memorandum of Agreement between the Departments of State and Defense
MoD	Ministry of Defence
MPRI	Military Professional Resources Incorporated
NATO	North Atlantic Treaty Organization
NBC	Nuclear, Biological and Chemical
NGO	Non-Governmental Organization
NIE	New Institutional Economics
OAU	Organization of African Unity
OGR	Committee on Oversight and Government Reform
OMB	Office of Management and Budget
OPF	Oil Protection Force
ORHA	Office of Reconstruction and Humanitarian Assistance
PMC	Private Military Company
PMF	Private Military Firm
PMSC	Private Military and Security Company
PSC	Private Security Company

PSD	Personal Security Detail
RFP	Request for Proposal
ROC	Reconstruction Operations Center
SecDef	Secretary of Defense
SCEG	Security in Complex Environments Group
SIGAR	Special Inspector General for Afghanistan
SIGIR	Special Inspector General for Iraq
SOF	Special Operations Forces
SOFA	Status of Force Agreement
SOP	Standard Operating Procedure
SSR	Security Sector Reform
TCE	Transaction Cost Economics
UCMJ	Uniform Code of Military Justice
UK	United Kingdom
UN	United Nations
US	United States
USAID	United States Agency for International Development
VP	Voluntary Principles on Security and Human Rights
WPPS	Worldwide Personal Protective Service

Chapter 1: Motivation, Markets and Client Relations – Modelling the Behaviour of Private Security Companies

To what extent should states rely on private security providers in conflict environments? Their proponents hail private security companies (PSCs), i.e. private, for-profit companies that provide armed perimeter, personal and convoy security in a high-risk environment, as a solution for many of the problems posed by contemporary conflict environments: PSCs are cost-efficient, flexible and, since they are not part of the state-organized military, easier for conflicting parties and NGOs to interact with.¹ It has even been suggested that PSCs could contribute troops to UN peacekeeping missions.² Most of the literature on security privatization, however, emphasises the problems involved in the use of PSCs. One persistent concern is that, unlike the state-organized military, PSCs are inherently unreliable and disloyal and should therefore not be entrusted with the provision of armed security services.³

Two characteristics of PSCs are believed to make security provision through PSCs inherently problematic: Compared to their counterparts in the state-organized military, PSCs are said to have greater **incentives** to behave in problematic ways and more **opportunities** to do so without serious consequences. Their profit interest supposedly motivates PSCs to take actions that appear profitable, regardless of the effect on their clients or overall mission success.⁴ PSCs have the opportunity to act on this motivation, because, as private entities, they largely remain outside the scope of military law.⁵ While most experts acknowledge that

¹ Brooks (2000), p. 35, Spearin (2005), p. 7, Stanger (2009), p. 93ff, Ortiz (2010), p. 7, Mears (2009), p. 7.

² O'Hanlon/Singer (2004), p. 92. In 2006, the US PSC Blackwater allegedly announced its willingness to deploy private peacekeepers to Darfur (Witter (2006), p.1).

³ Baker (2011), p. 6, Schreier/Caparini (2005), p. 90.

⁴ Singer (2003), p. 152, Avant (2005), p. 48, Holmqvist (2006), p. 28.

⁵ Holmqvist (2006), p. 29, Percy (2006), p. 18, O'Hanlon/Singer (2004), p. 93.

PSCs are not unregulated,⁶ existing regulation is deemed too weak to prevent PSCs from engaging in problematic behaviour.⁷

Hence, PSCs are widely believed to be inherently problematic. While few advocate an outright ban,⁸ most experts believe that only a yet to be devised system of strict, formal regulations, including intrusive monitoring and strong sanctions, could contain their problematic motivations, curtail their opportunities to engage in misconduct and make a limited use of PSCs possible.⁹ While there is much debate about how best to regulate the private security industry (PSI), most experts agree that in its absence the widespread use of PSCs remains problematic.¹⁰

However, while the problematic nature of PSCs and its regulatory implications are widely discussed, the underlying behavioural assumptions are rarely subjected to critical review. This introductory chapter outlines the core puzzle of this thesis by demonstrating that the prevalent behavioural model is not supported by the available empirical evidence of UK PSC conduct in Iraq and Afghanistan. If PSCs are as focused on their profit interest and as loosely controlled as the literature intimates, misconduct should be their default option. Instead, this chapter shows that misconduct has been the exception rather than the rule in the UK PSI active in Iraq and Afghanistan. Indeed, UK PSCs were and are frequently lauded for their professionalism and loyalty.¹¹ Indeed, there is evidence suggesting that UK PSCs performed services in excess of their contractual duties. This clashes with the prevalent behavioural model and its focus on PSCs' profit interests, which raises two questions:

- **Why are UK PSCs not more often engaged in problematic behaviour, as expected by the prevalent literature?**
- **Why do UK PSCs engage in behaviour that seems to contravene their profit interest?**

In answering these questions and drawing on the empirical evidence derived from the UK PSI, this thesis proposes an alternative behavioural model that focuses on three aspects of

⁶ Percy (2006), p. 9.

⁷ Singer (2004 IV), p. 534, Stange (2009), p. 92, War on Want (2006), p. 13.

⁸ For an exception, see Musah/Fayemi (2000), p. 12.

⁹ Percy (2006), p. 63, Singer (2003), p. 234.

¹⁰ Holmqvist (2005), p. 58-59, Spear (2006), p. 57, Greenstock (2006).

¹¹ Shays in CWC (2010), Cancian (2008), p. 65.

PSC behaviour, which the prevalent conceptualization of PSC behaviour misrepresents. The first aspect is the **decision-making process within individual PSCs**. The literature explains the motivation underlying PSC behaviour by focusing solely on their self-interested profit-maximization. Such an atomized, parsimonious view of economic action ignores the social context in which PSCs operate and its influence on behaviour. Rather than monolithic, single-minded entities, this thesis proposes that PSCs are made up of various groups of actors with often diverging interests. Their corporate interest is thus more akin to an amalgam of compromises than a single, coherent profit-motive. To facilitate these compromises, companies rely on conventions, specifically the norms and values of military professionalism, which compete with and, at times, displace the profit-motive in PSC decision-making.

The second aspect is the **market for PSC services**. The literature relies on an unsophisticated and ill-supported understanding of competition to argue that the market for private security fails to discourage PSCs from maximising their profit at their clients' expense, leaving their clients unable to sanction misconduct. Using Michael Porter's Five Forces Framework, this thesis challenges this view. It argues that the market for PSC services, as shown by the example of UK PSCs, provides a level of competitive pressure that is conducive for the adherence of conventions. It is neither too competitive to force PSCs to maximise their short-term profit, nor does it allow them to become so powerful that they can dictate terms to their customers.

The third and final aspect is **customer relations in the PSI**. Again, the literature sees this relationship as primarily benefiting PSCs. Protected from what little competitive pressure the market may exert over their behaviour, PSCs supposedly can exploit their contractual relations by providing lower quality services or by enforcing higher prices with threats of service disruptions. Given that clients are dependent on the private provision of security, they are believed to be at the mercy of their contractual partners, unable to sanction even grave misconduct. The alternative approach that this thesis proposes, inspired by the evidence derived from the UK PSI, stresses mutual dependency between PSCs and their customers. It argues that, especially when facing uncertainty and ambiguity - a common occurrence in the volatile environments PSCs work in - PSCs are more likely to cooperate with their contractual partners than to exploit their clients.

Yet, the purpose of this thesis is not to provide an *apologia* that deflects criticism from the PSI. Evidence from the conflicts in Iraq and Afghanistan indisputably shows PSCs engaging in misconduct. This thesis agrees that the use of PSCs needs to be better regulated. However, such regulation needs to be well-crafted: tight enough to deter and punish misconduct, yet loose enough not to stifle the industry or overburden its customers. To achieve this, an accurate understanding of the behaviour of PSCs is needed and it is here that this thesis hopes to provide important insights. Using the case of the UK PSI, it specifically hopes to show that PSC behaviour can be controlled without employing costly and intrusive formal regulation. Moreover, this thesis seeks to make a contribution to what is already a vibrant debate about PSCs by focussing on aspects that are important but so far largely overlooked, such as the UK PSI and genuine private sector demand for PSC services. Finally, this thesis hopes to be informative for practitioners in the PSI - customers as well as PSCs. Lately, many PSC representatives have disengaged from the academic debate about security privatization due to its increasing politicization¹² and choice of focus, which is deemed irrelevant for the industry.¹³ By engaging closely with the industry and by focussing on subjects such as labour relations, competition and customer relations, this thesis hopes to be more relevant to PSCs.

The first part of this chapter – sections one through four – is devoted to analysing the prevalent behavioural model. Section one identifies its origins in the literature and its theoretical underpinnings, specifically the Principal/Agent Problem and the Rational Actor Model. Section two and three take a closer look at the model's view on incentives driving PSC behaviour and their opportunities to act on them. Section four concludes by showing that the available evidence does not support the prevalent behavioural model. In turn, part two – sections five and six – discusses this thesis' central research question and outlines a theoretical alternative to the prevalent model of PSC behaviour. Part three – in four shorter sections – addresses methodological issues. Section seven focuses on the question of how to study conventions and takes a look at the available evidence. Section eight discusses the design of the semi-structured interviews that make up the core of the data gathered for this thesis. Section nine expands on research ethics and section ten outlines the scope of the thesis.

¹² Donald (2006 II), p. x, Cancian (2008), p. 71.

¹³ Worcester (2009), Kroha (2009). Beese in Carmola (2006), p. 161-162.

Section One: The Behavioural Model and Its Theoretical Underpinnings

While the debate about security privatization rarely focuses on the behaviour of PSCs, it is far from true that authors discussing security privatization ‘don’t do [PSC] behaviour’.¹⁴ The increasing privatization of security and military services is believed to be problematic, precisely because PSCs allegedly behave in an ‘unreliable and untrustworthy’ manner.¹⁵ Likewise, the need for regulation is mainly a function of concerns about the ‘mercenary motives of those involved with private force’ and its behavioural implications.¹⁶ Although rarely the focus of the discussion and lacking an explicit behavioural model, the literature’s conceptualization of PSC behaviour is remarkably coherent. To make the model explicit, this thesis carefully surveyed countless publications about PSCs for statements characterising PSC behaviour. Specifically, it identified themes in the literature and collected references to theoretical concepts used to conceptualize PSC behaviour and their underlying motivations. A draft of the behavioural model was previously published¹⁷ and presented to expert audiences to solicit additional feedback, which this study builds on.¹⁸ It is the resulting common understanding of how contemporary PSCs behave that this thesis describes as the “prevalent, if implicit behavioural model”. The remainder of this section takes a closer look at this behavioural model, in particular at its theoretical underpinnings.

The (Contractual) Relationship

The behaviour of PSCs is generally conceptualized in the context of a relationship, specifically a contractual relationship between a US/UK PSC and the US/UK government.¹⁹ Some have argued that both parties are often not connected by direct contractual relations, but separated by layers of subcontracting.²⁰ However, interviews suggest that many of the companies and NGOs that use PSCs in Afghanistan and Iraq are themselves under contract with the US or the UK government.²¹ Such subcontracting constitutes at least an indirect relationship, as the US/UK government often exert control over subcontractors either

¹⁴ Anna Leander, conversation with the author, ISA Convention 2009, New York.

¹⁵ Baker (2011), p. 6.

¹⁶ Pattison (2010), p. 427.

¹⁷ Drutschmann (2007).

¹⁸ The model was presented at the 2006 IUS/Canada Conference in Ottawa, the 2007 AFK *Nachwuchstagung* in Iserlohn and the 2007, 2008 and 2009 ISA Convention in Chicago, San Francisco and New York, respectively.

¹⁹ Owens (2008), p. 982.

²⁰ Kümmel (2004), p. 18, Bennett (2010), Singer (2005), p. 5.

²¹ Willis-Fleming (2008), Pelton (2006), p. 94.

directly or through their subcontractors.²² James Cockayne further argues that the ‘binding legal authority’ states exert over PSCs also constitutes a relationship.²³ While conceptualizing the behaviour of PSCs in relation to the public sector is not *per se* objectionable, this depiction ignores genuine private sector demand and private sector intermediaries, i.e. companies and NGOs that directly contract with PSCs. Moreover, defining relationships broadly, as advocated by Cockayne, blurs the difference between strong direct contractual relations and weaker forms of influence.²⁴ Finally, the literature tends to emphasise the state’s role as a regulator at the expense of its role as a customer.

Theoretical Underpinnings I: The Principal-Agent Problem

To describe PSC behaviour within the contractual relationship, the PSC literature frequently relies on the principal-agent (P/A) problem.²⁵ The P/A problem describes a situation where two actors are joined in a hierarchical relationship: The state (**principal**) hires a PSC (**agent**) to perform certain duties in exchange for financial compensation.²⁶ What renders this relationship problematic is the asymmetric distribution of information among the contracting parties.²⁷ An agent can shirk rather than work if he/she knows more about the tasks he/she is performing (hidden information)²⁸ or because the agent’s behaviour cannot be directly observed (hidden action).²⁹ The PSC literature adds a further possibility to shirk: Since PSCs are not part of the military’s ‘chain of command’ or constrained by strict, formal regulation, the state (principal) allegedly lacks the means to sanction the behaviour of PSCs (agents).³⁰

Again, the use of the P/A problem to discuss PSCs is not *per se* objectionable. However, how the concept is applied to PSC behaviour is problematic on two accounts. First, the intensity of the principal-agent problem is a function of the contracting parties’ divergent interests.³¹

²² Edwards (2011), Thompson (2011).

²³ Cockayne (2007), p. 199.

²⁴ Indeed, Cockayne recognizes this problem when he proposes to arbitrarily limit the relationship to legal control to distinguish it from ‘influence’ (Cockayne (2007), footnote 15).

²⁵ Examples include Singer (2003), p. 151ff, Michaels (2010), p. 729ff., Cockayne (2007), p. 196ff., Stöber (2007), p. 121ff., Camm (2005), McCoy (2010), p. 673ff, McFate (2008), p. 651ff, Møller (2005), p. 12ff.

²⁶ Pratt/Zeckhauser (1985), p. 2-3.

²⁷ Arrow (1985), p. 37.

²⁸ Pratt/Zeckhauser (1985), p. 3, Douma/Schreuder (2002), p. 55ff.

²⁹ Arrow (1985), p. 37, Douma/Schreuder (2002), p. 60ff.

³⁰ Petersohn (2008), p. 8.

³¹ Pratt/Zeckhauser (1985), p. 5. See Singer (2003), p. 151.

The PSC literature does not allow for the possibility that the interests of principals and agents may coincide or that either party may benefit from the relationship in other ways than at each other's expense. Secondly, the PSC literature implicitly assumes that public principals and private agents are inevitably divided by a significant conflict of interests. As a result, the literature ignores a rich debate within economics that views the principal-agent problem as a coordination problem. Here, the conflict of interest can be mitigated, provided the right incentives are introduced to align the interests of principals and agents. Goal alignment as a means for exerting control over PSCs thus receives limited attention in the PSC literature, which far too readily accepts the conflict of interest between PSCs and their clients as a *fait accompli*.³²

Theoretical Framework II: the Rational Actor Model

According to Kenneth Arrow, the P/A problem's 'underlying principles are impeccably neoclassical', i.e. principals and agents are assumed to be rational actors.³³ In its weakest form, the rationality assumption states that an actor has a coherent hierarchy of preferences.³⁴ However, the rationality assumption is frequently expanded to the notion that agents are 'acting in their own self-interest'.³⁵ Authors discussing security privatization are taking this to mean that PSCs are 'driven primarily by profit, not morals'.³⁶ PSCs are hence expected to shirk, i.e. to maximise their financial profit regardless of their principals' interests, whenever they are given the opportunity to do so. This thesis does not object to the rationality assumption in its weakest form. What is problematic, however, is the literature's view that - in Peter Singer's words - PSCs are 'driven neither by goodwill nor honor, but rather by profit'.³⁷ Parsimoniously focusing on PSCs' self-interested desire for financial profit provides a very simplistic, atomized view of PSC motivation, which ignores the social context in which PSCs operate.

³² See Chapter 5.

³³ Arrow (1985), p. 44.

³⁴ Schmalen (2001), p. 41.

³⁵ Arrow (1985), p. 44.

³⁶ Jennings (2006), p. 24. See also Michaels (2004), pp. 1019-1020, Salzmann (2008), p. 885.

³⁷ Singer (2003), pp. 151-152.

Conclusion

This thesis is less concerned about the theoretical concepts the literature relies on than about their application and about those theories it chooses to ignore altogether. It is particularly interesting how limited the literature's engagement with economic theory remains, given that it conceptualizes PSCs primarily as "economic actors".

Overall, the theoretical underpinnings of the prevalent behavioural model are rarely explicitly discussed in the literature. Most authors instead voice their concerns about PSC behaviour by focussing on their **incentives** and **opportunities**.

Section Two: Incentives

Concerns about PSCs' motivations are usually discussed by (unfavourably) comparing PSCs to the state-organized military: While the military is considered to be largely indifferent to financial incentives, PSCs are allegedly compelled to shirk due to their profit motive. This section discusses the various reasons presented for the military's indifference towards financial profit and, in turn, for its purported importance in PSCs decision-making.

Professionalism

Critics are concerned that PSCs lack the internal constraints that prevent the military from engaging in problematic behaviour. While the military increasingly exhibits characteristics of an occupation, e.g. temporary rather than life-long employment and cash rather than in-kind benefits, it retains aspects of a profession and a calling,³⁸ e.g. voluntary submission to the strictures of military discipline, 24/7 availability and lengthy overseas deployments.³⁹ Moreover, the military differs from any other occupation or profession, because it requires its members to sign a 'contract of unlimited liability'.⁴⁰ As a result, the military has developed a strong 'professional ethos',⁴¹ i.e. a set of norms and values governing the conduct of its members. Key components are a sense of duty and a preference for social

³⁸ Moskos (1977), pp. 3-4. On military professionalism, see Huntington (1957), Janowitz (1964), Feaver (2003). On the military as an occupation, see Moskos/Wood (1988), Moskos/Segal (2000).

³⁹ Moskos (1977), p. 3, Dandeker (1999), p. 47.

⁴⁰ John Hackett in Baker (2011), p. 25.

⁴¹ Soeters (1998), p. 176.

esteem over financial benefits.⁴² In contrast, critics argue that PSC employees are motivated by ‘lucrepathic’ motives,⁴³ i.e. a self-interested desire for financial profit, which makes their use of force unethical.⁴⁴ This stereotype of the military as a ‘greedy institution’,⁴⁵ i.e. one that issues exceptional demands to its members, with a strong professional ethos arguably creates a powerful self-selection mechanism: individuals that prefer financial profit or independence avoid the military, while it attracts those with a strong sense of duty and a willingness to submit to the constraints of military.

This selection upon entry into the profession is reinforced within the military, which strongly emphasises its professional ethos, e.g. as an integral part of military training, its rituals and legal code.⁴⁶ Career advancement and informal structures, i.e. peer pressure, coax soldiers to adopt behaviour congruent with the professional ethos or to leave the armed forces. While the literature focuses on the absence of a strong professional ethos within PSCs,⁴⁷ a more salient concern may be that PSCs lack the institutional structure to support a professional ethos. Indeed, the stereotypes associated with PSCs, i.e. their alleged “lucrepathic” motivation, may attract individuals to whom ‘the motive of financial gain is likely to play a greater role’ and thus perpetuate precisely the kind of motivation the literature is concerned about.⁴⁸

Financial Structure

The problematic motivation of PSCs is often blamed on structural characteristics, namely on PSCs being private, for-profit companies. In contrast, the military is said to be less affected by financial incentives, because it is institutionally unable to generate a profit. Rather than raising funds by selling its goods and services in a market, the US and UK military operate on a fixed budget. Even cost reductions would not return a profit, because military personnel receive fixed wages rather than performance-based compensation and would therefore not benefit from any gains accumulated through cost-cutting. In addition to isolating the military from market dynamics, its financial dependence encourages soldiers to align their interests

⁴² *Ibid.*

⁴³ Lynch/Walsh (2000), p. 136.

⁴⁴ Pattison (2008), p. 146, Coady (1992), p. 63. For opposing views, see Baker (2011), p. 39, Scoobie (1992), p. 71ff, Lynch/Walsh (2000), p. 134ff.

⁴⁵ Cohn (2011), p. 388. See also Segal (1986), p. 9ff.

⁴⁶ Soeters et al (2004), p. 241.

⁴⁷ Singer (2003), pp. 151-152, Avant (2005), p. 48.

⁴⁸ Pattison (2010), p. 434.

with their civilian masters.⁴⁹ The only path available to soldiers for increasing their financial profit is through the higher wages associated with promotions, which are largely predicated on meeting the expectations of the civilian leadership. PSCs are not similarly isolated from market influences. Instead, their need to generate revenue exposes PSCs to market fluctuations. Both, a rapid increase and a sudden decrease in demand can cause PSCs to lose money: During a boom, existing contracts no longer cover the then-increased production costs, while, during a downturn, labour costs decrease more slowly than the price for PSC services.⁵⁰ PSCs also bear client-related risks, such as suspended or non-payment. Given their often meagre financial reserves, economic necessity may come to dictate PSC behaviour in such situations.

Most authors are concerned about PSCs' desire for profit, but a more persuasive argument against PSC use may be that their need to be profitable may lead PSCs to prioritise financial considerations over their customers' needs and the requirements of the mission. When Peter Singer argues that '[t]he fundamental goal of corporations is the maximization of profit',⁵¹ said goal may be a matter of necessity, not of choice.

Conclusion

Expanding on the literature's concerns, this section has shown that the motivational structure of PSCs raises questions about their widespread use. It also showed that the pursuit of profit may be less a result of desire than of need. Whether a PSC is motivated by a desire or a need for profit can produce similar behavioural outcomes, but it calls for very different responses from regulators and customers.

Moreover, the literature discusses PSC motivation in too abstract a fashion: PSCs are motivated by financial profit because they are private, for-profit companies.⁵² Recently, individual contractors have become increasingly vocal about their motivations and experiences in the PSI. Unfortunately, their blogs, online news-groups and memoirs have largely been ignored by the PSC literature to date.⁵³ Likewise, while interviews with PSC representatives play an important role in the literature, they are rarely used to explore their

⁴⁹ Singer (2003), p. 172, Avant (2004), p. 183.

⁵⁰ Bailes/Holmqvist (2007), p. 5, Worcester (2008).

⁵¹ Singer (2003), p. 154.

⁵² Lynch/Walsh (2000), p. 136.

⁵³ For an exception, see Higate (2011).

motivations. Finally, the section highlighted that the literature's concerns about PSC motivations rely on an exaggeratedly stark contrast between public and private sector employees. This fits uneasily with widespread concerns about experienced and highly qualified soldiers leaving the military to join PSCs.⁵⁴ Unfortunately, the literature fails to explain if and how the professional ethos, which is such an integral part of soldiers' motivations during their military career, disappears once they enter PSC employment.

Section Three: Opportunities

Regardless of their incentives, PSCs are more likely to engage in problematic behaviour if given the opportunity to do so without significant consequence, such as legal penalties or contractual fines. By controlling and sanctioning their behaviour, clients can deny PSCs such opportunities and make problematic behaviour less likely. This section analyses three sources of control, as discussed in the PSC literature.

Legal Controls

Regulation of PSCs is undoubtedly the most widely discussed source of control.⁵⁵ While few laws were explicitly crafted to regulate the PSI, most authors reject the notion that PSCs operate in a legal vacuum.⁵⁶ Instead, they recognize a variety of international and domestic regulations that are applicable to PSCs, but conclude that this regulatory 'patchwork' exerts insufficient control over PSC behaviour.⁵⁷ For instance, since many of the laws applicable to PSCs were crafted to regulate other actors, i.e. mercenaries or arms manufacturers, they often lack regulatory fit: PSCs either fall foul of their definitions or they are easily circumvented.⁵⁸ Also, current criminal and international law seems ill-suited to prosecute corporations:⁵⁹ PSC employees engaged in misconduct may face long prison sentences, while their employers remain beyond the reach of criminal law – a situation few would find acceptable.⁶⁰ The literature discusses numerous further problems, including immunity from

⁵⁴ Baker (2011), pp. 60-61, Spearin (2006), p. 58ff, Sheehy *et al* (2009), p. 98.

⁵⁵ See also Chapter 6.

⁵⁶ For exceptions, see Singer (2004), p. 1, Eric Jensen in Risen (2010), Gómez del Prado (2010), Chakrabarti (2008), p. 114.

⁵⁷ Cockayne (2007), p. 201. See also Percy (2006), p. 9, Carmola (2006), p. 162, Sheehy *et al* (2009), p. 7.

⁵⁸ Walker/Whyte (2005), pp. 657-658, Jennings (2006), pp. 29-30.

⁵⁹ DCAF (2006), p. 6.

⁶⁰ Cohn (2011), p. 391.

local laws⁶¹ and the lack of jurisdiction,⁶² which affirm the literature's conclusion that existing regulation is ineffective.

Enforcement of Legal Controls

Yet, the biggest problem may not be the lack of regulation, but its enforcement.⁶³ Enforcement of international regulation is traditionally weak, as states only reluctantly relinquish regulatory authority⁶⁴ and are lax in meeting their responsibility to enforce international law.⁶⁵ Domestic regulation by *territorial states*, i.e. where PSCs operate,⁶⁶ is similarly weak, as they often lack the institutional capacity necessary for effective regulation.⁶⁷ *Contracting states*⁶⁸ and *home states*⁶⁹ may have greater institutional capacity, but their effectiveness is hampered by the transnational nature of the PSI.⁷⁰ Their civilian law-enforcement lacks the capability to investigate allegations of misconduct in high-risk environments to an acceptable evidentiary standard and PSCs can circumvent their regulation by moving offshore.⁷¹ To address these shortcomings, the US government extended military jurisdiction over PSCs in support of contingency operations,⁷² but constitutional⁷³ and procedural concerns⁷⁴ limit its effectiveness. Finally, industry representatives advocate self-regulation as an effective supplement to formal regulation.⁷⁵ However, there are serious concerns about its enforcement, as monitoring compliance is entrusted to industry-financed bodies and companies can avoid investigations by withdrawing from the regulating industry association.⁷⁶ Hence, while PSCs may not operate in a *de jure* legal vacuum, it can be argued that, given the lack of regulatory fit and enforcement, they operate in a *de facto* legal vacuum.

⁶¹ Carter (2004), p. 2, V&E Task Force (2004).

⁶² Jennings (2006), p. 26.

⁶³ Holmqvist (2005), pp. 52-54, Brooks in The Century Foundation (2007).

⁶⁴ Singer (2004 IV), p. 547. Bearpark/Schulz (2007), pp. 243-244.

⁶⁵ Bailes/Holmqvist (2007), p. 7, Lehnhart (2007), p. 141, Abrahams (1999), p. 92.

⁶⁶ Montreaux Document, §9d.

⁶⁷ Singer (2004 IV), p. 541, Cullen (2000), p. 38, Bruno (2008).

⁶⁸ Montreaux Document, §9c.

⁶⁹ *Ibid.*, §9e.

⁷⁰ Singer (2004 IV), p. 524, Ortiz (2004), p. 218.

⁷¹ Bearpark/Schulz (2007), p. 246, Spear (2006), p. 52, Ortiz (2004), 217, Avant (2007), p. 185.

⁷² Singer (2007 III).

⁷³ Elsea *et al* (2008), p. 27, Dionne (2008), Sacilotto (2007), Masterton (2009), p. 104ff,

⁷⁴ Masterton (2009), p. 74ff.

⁷⁵ Bearpark/Schulz (2007), p. 247.

⁷⁶ Falconer (2007).

The Market for Security

The second source of control is the market for security. To paraphrase John Stuart Mill, it is only through competition that (security) privatization becomes beneficial.⁷⁷ In competitive markets, all participants are price-takers not makers, as they lack the market power necessary to determine the prices of their goods/services.⁷⁸ Should a supplier set a higher price, he/she will lose customers to a competitor and eventually be forced out of business. Indeed, a competitive market arguably punishes problematic behaviour harsher than price increases: While a price increase is easily quantifiable and reversible, a reputation for problematic behaviour may stay with a supplier for a while. However, not all markets are competitive;⁷⁹ critics like Anne Markusen contend that this applies to the market for security.⁸⁰ Without competition, suppliers can raise prices without having to fear repercussions, as customers cannot easily switch to an alternative supplier. Worse still, customers are believed to be utterly dependent on PSCs in high-risk environments, since there is generally no (public sector) alternative available. Rather than empowering clients to control PSCs, the market is therefore seen as providing PSCs with opportunities for problematic behaviour.

The Relationship between PSCs and their Clients

The third source of control, the contractual relationship, should give clients considerable sway over PSC behaviour, as they can define contractual duties and threaten non-payment and non-renewal should PSCs misbehave. Moreover, where legal recourse and the market are slow, cumbersome and potentially costly, clients can use their day-to-day contact to PSCs to influence their behaviour. Yet, the PSC literature portrays the contractual relationship in a very different light: Clients can only sanction problematic behaviour if they are aware of it and monitoring PSC behaviour in high-risk environments is expensive and often impossible.⁸¹ In theory, clients could judge a PSC's performance based on its outcomes, but this is similarly problematic: A shirking PSC may benefit from inept insurgent attacks, while a diligent PSC may fail due to overwhelming opposition.⁸² As a result, shirking may escape detection. Another cause for concerns is the contract itself, particularly its

⁷⁷ Mills in Donahue (1989), p. 74.

⁷⁸ Douma/Schreuder (2002), p. 51.

⁷⁹ Mankiw (2000), p. 342ff.

⁸⁰ Markusen (2001), p. 2. See also, Petersohn (2008), p. 2, Jennings (2006), p. 2ff, Camacho (2010), p. 650.

⁸¹ Singer (2003), p. 152ff, Green (2004), Baker (2011), p. 117.

⁸² Avant (1999), p. 6.

specificity. Principals limit shirking by specifying the agent's duties *en détail* in their contracts.⁸³ However, contracts negotiated in environments characterized by high volatility and uncertainty are 'inevitably [...] quite incomplete'.⁸⁴ As the security situation changes, clients cannot simply order PSCs to take action, as they would with the military. Instead, they have to amend contractual details through re-negotiations, which is believed to limit clients' ability to control PSC behaviour.⁸⁵

PSCs may even use the relationship to evade market-based competition: First, a PSC submits a "low-ball" bid, i.e. an offer at a price significantly below the market price, to undercut competitors,⁸⁶ before increasing its initially meagre profit margin through re-negotiations or by providing a cheaper, low-quality service.⁸⁷ Economists refer to this as a "hold-up problem". Whether clients accept such *ex post* rent-extraction depends on their switching costs. Many clients may consider the decrease in security that a sudden change in provider entails too great a risk to contemplate changing providers.⁸⁸ Hence, Eric Fredland argues that 'the government [as a customer] is more vulnerable to hold-up than is the company'.⁸⁹

Conclusion

The literature argues that the legal framework in which PSCs operate, the market and their contractual relationships are inadequate sources of control. However, even if laws are ill-fitting and unenforceable, their violation nonetheless bears a cost for PSCs. Some authors recognize such reputational costs, but consider them to be inequitable to formal regulation. Likewise, the literature's analysis of competition is unconvincing, especially its limited engagement with economic theory. Finally, the literature characterizes both dependency and uncertainty in the relationship as being limited to clients, but PSCs are arguably just as dependent on their customers as *vice versa*. Moreover, in the long-term relationships that are prevalent in the PSI, information asymmetries may matter little, as clients discover and punish problematic behaviour over time.

⁸³ Fredland/Kendry (1999), p. 156.

⁸⁴ Fredland (2004), p. 211. See also Hartley (2004), p. 204.

⁸⁵ Carmola (2006), p. 169.

⁸⁶ Markusen (2003), p. 478. See also Stevenson (2008), p. 131.

⁸⁷ Carter (2004), p. 4, Fredland/Kendry (1999), p. 157.

⁸⁸ Perlo/Sköns (2009), p. 15.

⁸⁹ Fredland (2004), p. 211. See also Cockayne (2007), p. 204.

Sections one to three thus identified several weaknesses in the literature's conceptualization of PSC behaviour. Nonetheless, the literature raises serious questions about the motivation of PSCs and their opportunities to act on them. The following section discusses whether the available evidence supports the literature's concerns about PSC behaviour.

Section Four: Behavioural Manifestations

The Abu-Ghraib scandal, the Nisour Square shootings, the *Aegis* trophy video, *ArmorGroup's* Kabul Embassy parties, the *Custer Battles* fraud case – given the number of incidents with PSC involvement, questioning whether the available evidence supports the literature's concerns about PSCs seems almost fastidious. However, this section argues that support for the literature's view is scant among the evidence of PSC behaviour in Afghanistan and Iraq from 2003-2009.

A Quantitative View on the Evidence

While some allegations of misconduct have remained or remain just that,⁹⁰ PSCs have undoubtedly been involved in problematic behaviour. Yet, the mere occurrence of problematic behaviour is not sufficient proof that PSCs are inherently problematic. As Deane-Peter Baker points out, 'under the extreme stresses of combat, it is unrealistic to expect such things will never happen'.⁹¹ To substantiate the literature's concerns, PSCs' record would have to show that they are particularly susceptible to misconduct. Unfortunately, reliable figures that would either substantiate or disprove the literature's claims are not available.⁹² Until they are, the aforementioned scandals constitute merely anecdotal evidence.

However, if PSCs are indeed as focused on their profit interest and as loosely controlled as the literature intimates, one may expect a large number of incidents of misconduct being reported.⁹³ Critics may contend that PSCs and their employees have little reason to incriminate themselves by advertising problematic behaviour. However, the same cannot be said for their customers, who are presumably more concerned about not becoming an auxiliary to misconduct by covering it up. Indeed, interviews with PSC customers suggest that they would immediately report any misconduct to protect themselves from liability.⁹⁴ Furthermore, disgruntled former employees, competitors and the considerable media interest in PSCs make a significant dark figure of serious incidents unlikely. Even if reliable figures on PSC misconduct were available, one would still have to determine whether it is

⁹⁰ See, for example, the *Aegis* trophy video, for which the company was cleared by an US Army investigation (Gornall (2011)).

⁹¹ Baker (2011), p. 51.

⁹² Cusumano (2009), p. 5. Researchers at the FU Berlin are compiling such data based on media reports.

⁹³ Isenberg (2004), p. 68.

⁹⁴ Marshall (2011), Forbes (2007), Sorge (2009).

attributable to PSCs' inherently problematic nature or to their operational environment. Here, Keith Hartley rightly cautions against comparing PSCs to an ideal model of the state-organized military.⁹⁵ If PSCs are instead compared to e.g., the US military's record in Iraq and Afghanistan, Abu Ghraib,⁹⁶ Shinwar,⁹⁷ Haditha⁹⁸ and other scandals suggest that misconduct is unfortunately not an infrequent occurrence when soldiers operate in environments as taxing as Iraq and Afghanistan.⁹⁹

Moreover, there is ample evidence of PSCs acting in a fashion commensurate with the highest professional norms in situations of extreme duress.¹⁰⁰ While such instances are likewise admittedly only anecdotal evidence, much of said evidence comes from customers, who are arguably intimately familiar with and have little reason to mischaracterize the day-to-day behaviour of PSCs and who often laud their professionalism.¹⁰¹ One particularly pertinent example occurred during the 2004 *Shia-Uprising* in Iraq, when PSCs continued to support their clients, while coalition forces refused to act due to security concerns.¹⁰² Moreover, when describing their motivation, PSC personnel themselves frequently invoke the very norms and values that the literature ascribes to the military's professional ethos: sense of duty, comradeship, personal integrity, etc.¹⁰³ The presence of such behaviour suggests that conceptualizing PSCs as inherently problematic provides at best an incomplete picture. Rather than a source of unequivocal support for the literature's conceptualization of PSC behaviour, a quantitative assessment of the available evidence to date remains at best inconclusive.

A Qualitative View on the Evidence

In the absence of reliable figures on PSC behaviour, a qualitative assessment of the available evidence may provide more support for the prevalent behavioural model. If a clear causal link could be established between problematic behaviour and PSCs' profit motive, this would

⁹⁵ Hartley (2004), p. 201. See also Avant (2005), p. 43, Chesterman (2009), p. 7.

⁹⁶ Hersh (2004).

⁹⁷ Gall (2007).

⁹⁸ Knickmeyer (2007).

⁹⁹ Cowen (2007), Amnesty International (2005).

¹⁰⁰ Baker (2011), p. 51, Cancian (2008), p. 71.

¹⁰¹ Hvaal (2007), Stewart (2007), p. 398, Etherington (2005), p. 222, Victoria Wayne in Feinaru (2008), p. 22, Shays in CWC (2010).

¹⁰² Stewart (2007), Etherington (2005), Priest (2004).

¹⁰³ Ashcroft (2006), p. 29, Laguna (2008), Low (2007), p. 54. See also Baker (2010), pp. 48-65.

arguably lend credence to the literature's concerns. However, several reasons suggest that such a causal link is difficult to establish.

First, the literature has to show that PSCs' characteristics identified as problematic actually cause problematic behaviour. Allegations that PSCs prolong conflicts to create demand for their services¹⁰⁴ or that they lack the 'discipline and incorruptibility that is essential for [peace-building/-enforcement operations]'¹⁰⁵ are devoid of any substance and thus hardly constitute proof for PSCs' problematic nature. Secondly, PSC behaviour cannot be considered problematic, if a public-sector security provider, i.e. the military, would act similarly under similar circumstances. For example, as PSCs' primary concern is their client's security, they are frequently accused of being insensitive to the impact of their actions on the local population.¹⁰⁶ However, the military's Standard Operating Procedures (SOPs) when protecting high-value individuals or convoys hardly call for a less robust posture.¹⁰⁷ Indeed, interviews with PSC representatives suggest that they consider themselves to be more respectful of the local population, as they frequently live among them rather than on well-protected military bases.¹⁰⁸ Thirdly, behaviour that is indicative of an inherently problematic nature needs to be clearly attributable to the company rather than to individual employees, as corporate and individual (financial) interests can diverge considerably.¹⁰⁹ A PSC that fails to control its employees' behaviour should not escape blame for their misconduct. However, as much as the military bears only limited responsibility for the actions of individual soldiers, a PSC that takes reasonable measures to prevent individual misconduct should also be able to limit its responsibility. Finally, some allowance should be made for the industry's growing pains, as cases of misconduct were often attributable to volatility in the market for PSC services and in the security environment in Iraq and Afghanistan rather than PSCs' problematic nature. After all, the fact that the large-scale use of PSCs is a fairly recent phenomenon is often cited to explain the poor state of public-sector oversight and

¹⁰⁴ Jennings (2006), p. 39, Musah/Fayemi (2000), p. 28, Perlo/Sköns (2008), p. 14.

¹⁰⁵ Münkler (2005), p. 134.

¹⁰⁶ Fainaru (2008), p. 139, Ricks (2009), p. 269.

¹⁰⁷ Cancian (2008), p. 71. See also DoD (2006).

¹⁰⁸ Lynch (2010), Phillips (2010).

¹⁰⁹ See Chapter 3.

regulation.¹¹⁰ PSCs should not be considered inherently problematic for behaviour that they are nowadays addressing with some success.¹¹¹

The strongest argument against the prevalent behavioural model, however, may not be the relative lack of problematic, but the presence of altruistic behaviour. On numerous occasions, PSC personnel performed services beyond their contractual duties, without financial compensation and at considerable risk to themselves and their companies' assets. PSCs have responded to requests for help by the CPA, the military and once even rescued the Polish ambassador during an ambush in Iraq.¹¹² PSC personnel also disarmed IEDs rather than leaving them for the military, which apparently happened so frequently that the DoD now forbids it.¹¹³ PSCs even set up charities and directly help the civilian population.¹¹⁴ Again, given the lack of reliable data on PSC behaviour, reported instances of altruism are little more than anecdotal evidence. Still, they pose a challenge to the literature's conceptualization of PSC behaviour.

Conclusion

While PSCs have indisputably engaged in problematic behaviour in Iraq and Afghanistan, their overall record does not support the claim that PSCs are inherently problematic. More importantly, the prevalent behavioural model fails to explain why PSCs, in the absence of effective regulation, would repeatedly engage in professional, even altruistic behaviour.

Industry representatives and proponents echo this argument in their criticism of the PSC literature: they complain that allegations against PSCs are unsubstantiated and exaggerated,¹¹⁵ stress the relatively low number of incidents¹¹⁶ and the acts of heroism committed by PSCs¹¹⁷ and suggest that disproportionate attention is paid to 'atypical, but high-profile companies'.¹¹⁸ However, their argument is limited to a critique of the prevalent behavioural model, which is supported by anecdotal evidence alone. When confronted with incidents of misconduct, PSC representatives stress their own accountability mechanisms,

¹¹⁰ Baker (2011), p. 60.

¹¹¹ Isenberg (2007), p. 86.

¹¹² Curtis (2007), Ashcroft (2006), p. 23ff, Messner (2007), p. 26, Singer (2004a), p. 1ff.

¹¹³ DoD (2006), p. 15.

¹¹⁴ Baer (2007), Ashcroft/Turlow (2009).

¹¹⁵ Spicer (2008), Donald (2006 II), p. x.

¹¹⁶ Baker (2009), p. 51, Isenberg (2004), p. 68.

¹¹⁷ Messner (2007), Gray (2005).

¹¹⁸ O'Brien (2007), p. 29, Cancian (2008), p. 65.

the quality of their employees and their volatile operational environment and blame unspecified “cowboys”, i.e. companies with little respect for the law or their customers.¹¹⁹ Yet, like the critics of PSC use, its proponents fail to provide a convincing alternative explanation for PSC behaviour that is supported by the available evidence and that addresses the legitimate questions raised by the literature. They fail to explain why - in a *de facto* legal vacuum, without strong institutional support for a professional ethos and with weak customer control – PSCs behave in a professional manner that, allegedly, at times violates their own profit-interest. Since neither critics nor proponents of PSC use offer such a behavioural model, this raises several interesting questions that this thesis sets out to address.

Section Five: The Research Question

The absence of problematic behaviour and the presence of professional, even altruistic actions exposes an important gap in the PSC literature: Its conceptualization of PSC behaviour fails to fully account for PSCs’ actual performance in Iraq and Afghanistan. Hence, either the literature’s conceptualization of PSC motivation is flawed or PSCs are more constrained in their opportunities - or both. By answering the questions **“Why are UK PSCs not more often engaged in problematic behaviour?”** and **“Why do UK PSCs engage in behaviour that seems to contravene their profit interests?”** this thesis will develop an alternative model of PSC behaviour.

PSC Motivation – Beyond the *Homo Economicus*

At the heart of this alternative behavioural model lies a very different approach to PSC motivation. The literature reduces PSC behaviour to a purely economic interaction undertaken by what is essentially a *homo economicus*,¹²⁰ i.e. a rational, self-interested, profit-maximising actor.¹²¹ Thus, the prevalent model is vulnerable to a line of criticism similar to the one levelled against the *homo economicus* within economics. As Francis Edgeworth stresses, the *homo economicus* is an ‘unsympathetic isolation abstractly assumed

¹¹⁹ Spicer (2008), Donald (2006), Clissit (2010), Claridge (2010).

¹²⁰ Benson (2007), p. 456.

¹²¹ Schmalen (2001), p. 43ff.

in Economics'.¹²² Critics like Frank Dobbins and Amartya Sen contend that its usefulness is restricted to being an abstract modelling assumption aimed at answering very general questions.¹²³ Indeed, would people actually behave like this 'anthropological monster',¹²⁴ they would be 'social moron[s]',¹²⁵ incapable of commitment, moral judgement or sympathy',¹²⁶ and '[n]o society would be viable'.¹²⁷

However, the PSC literature describes PSCs as if they actually behaved like a *homo economicus*. This is exemplified by the use of John Donahue's *The Privatization Decision* in the PSC literature.¹²⁸ Donahue argues that public (the state-organized military) and private agents (PSCs) behave in different ways, due to different methods of compensation.¹²⁹ He goes on to describe a 'pure' private agent as resembling a *homo economicus*,¹³⁰ but Donahue also stresses that his characterization of public and private agents is 'contingent' and 'slightly artificial'.¹³¹ Neither Singer nor Avant mention such constraints in their respective discussions of Donahue¹³² - let alone the many authors that cite them.

The above criticism against the *homo economicus* concept is not concerned about its intimation that private actors are self-interested or profit-motivated. Likewise, this thesis does not dispute the important role financial interests play in PSC decision-making. Instead, it is the assertion that the *homo economicus* 'is actuated only by self-interest'¹³³ that alarms critics. Likewise, this thesis questions the dominance the profit motive allegedly enjoys in PSC decision-making.¹³⁴ To borrow a metaphor: Understanding PSC behaviour and its underlying motivations by solely focusing on their profit-motive is 'like driving down an interstate looking through a soda straw'.¹³⁵ Profit is important, but it is not everything.

¹²² Edgeworth in Sen (1977), p. 326.

¹²³ Dobbins (2004), p. 3ff, Sen (1977), p. 322ff. See Becker (1992) for an opposing view.

¹²⁴ Bourdieu (2005), p. 83.

¹²⁵ Sen (1977), p. 336.

¹²⁶ *Ibid.*, pp. 326-336.

¹²⁷ Johansen in Sen (1977), p. 332. For similar concerns about the viability of social institutions, see Cramp (1991), p. 59 (family) or Fukuyama (1995), p. 14 (trade).

¹²⁸ Donahue (1989) in Avant (2005), p. 48, Singer (2003), pp. 151-155.

¹²⁹ Donahue (1989), p. 39ff.

¹³⁰ *Ibid.*, pp. 40-42.

¹³¹ *Ibid.*, p. 39.

¹³² Singer (2003), pp. 151-155, Avant (2005), p. 48.

¹³³ Edgeworth in Sen (1977), p. 317.

¹³⁴ Jennings (2006), p. 24, Spear (2006), p. 45.

¹³⁵ Mike DeCuir in Gladwell (2004).

Theoretical Alternatives

If PSCs are not solely motivated by their self-interested desire for financial profit, what else might motivate them? The following sections will outline an alternative behavioural model that this thesis will build on.

While neo-classical economics stands staunchly by the *homo economicus*,¹³⁶ heterodox economics, specifically economic sociology, may provide an answer. As its name suggests, heterodox economics does not present a single, coherent explanation for economic action.¹³⁷ Its *raison d'être* and the “glue” holding it together is, according to Tony Lawson, their ‘opposition to the mainstream or “neoclassical” orthodoxy’.¹³⁸ Economic sociology, in particular, focuses its criticism on how neo-classical economics atomizes economic action.¹³⁹ Contrary to that view, the central tenet of economic sociology is that economic action is “embedded” in a social context and influenced by it.¹⁴⁰ Indeed, several cases have been made for the relevance of the social context for economic action. Pierre Bourdieu and Anthony Giddens argue that the degree of isolation assumed by neo-liberal economics is impossible.¹⁴¹ Geert Hofstede has shown how economic action differs depending on its cultural context,¹⁴² while Ernst Fehr and Colin Camerer as well as Herbert Simon and James March highlighted the limits of human cognition and the need for guidance from the social context.¹⁴³ What these arguments have in common - and what they share with economic sociology - is the belief that explaining economic action by solely looking at its economic aspects is insufficient. Instead, economic sociology draws on ‘the sociological perspective’ to understand ‘economic phenomena’.¹⁴⁴ It argues that economic actors have social roles - ‘scripts’ in Frank Dobbins’ words.¹⁴⁵ These scripts, referred to as **conventions** at the collective level,¹⁴⁶ influence economic action through three social mechanisms.

¹³⁶ For exceptions, see Akerloff (2007), Lawson (2006), p. 488, Grey (2005), p. 10.

¹³⁷ Heterodox economics is an ‘umbrella term’ that unifies various economic traditions (Lawson (2006), p. 484).

¹³⁸ *Ibid.*, Colander *et al* (2004), p. 485.

¹³⁹ Dobbins (2004), p. 4. See also Parsons in Hirsch *et al* (1987), p. 322ff, Lawson (2006), p. 494.

¹⁴⁰ Granovetter (1985), p. 482ff.

¹⁴¹ Bourdieu (2005), p. 77, Giddens in Cramp (1991), p. 54.

¹⁴² Hofstede (1993), p. 81ff.

¹⁴³ March/Simon (2004), p. 518ff, Camerer/Fehr (2006), p. 47.

¹⁴⁴ Smelser/Swedberg (2005), p. 3.

¹⁴⁵ Dobbins (2004), p. 4.

¹⁴⁶ *Ibid.*, Young Back Choi argues that individuals seek conventions to ‘govern and guide’ their interaction to reduce the uncertainty they otherwise face (Choi (1993), p. 8).

Institutions, Networks, Power

- **Institutions**, which Dobbins defines as ‘conventions and the meaning they have for people’, offer actors prescriptions on how they are expected to behave.¹⁴⁷ Such institutions can manifest in various forms: They can be informal, based on tradition, e.g. a common culture¹⁴⁸ and best practices,¹⁴⁹ or they can have a more formal, legal character, e.g. contract law or economic policy.¹⁵⁰ Institutions can be aimed at a specific purpose or be the result of ‘history and happenstance’,¹⁵¹ and they may be adhered to tacitly or consciously.¹⁵² In any case, institutions are created and sustained by networks.¹⁵³
- **Networks** teach members conventions and, crucially, enforce their adherence by granting/denying membership and the privileges associated with it. However, networks need not rely on coercive means, as they can propagate institutions by shaping their members’ self-perception and the perception of the world around them.¹⁵⁴ Like institutions, networks exist in various manifestations: They can be formal, tightly organized bodies with codified rules, e.g. professional organizations¹⁵⁵ and trade unions,¹⁵⁶ or informal, loosely organized affairs, such as technology clusters,¹⁵⁷ business groups¹⁵⁸ or regular customers.¹⁵⁹ How networks teach and enforce institutions and what shape these institutions take, in turn, depends on the underlying power relations.
- **Power** describes the ability of actors to ‘promot[e] practices and public policies that are *in their interest* as being *in the common interest*’.¹⁶⁰ Traditional economics ‘has tended to regard economic action as an exchange among equals’,¹⁶¹ and has ignored asymmetric power distributions among buyers and sellers. Moreover, power is not

¹⁴⁷ Dobbins (2005), p. 27.

¹⁴⁸ Hofstede (1993), p. 81ff, Dobbins (2005), pp. 38-39.

¹⁴⁹ Powell (1996), p. 56.

¹⁵⁰ Streeck (1999), p. 198.

¹⁵¹ Dobbins (2005), p. 34.

¹⁵² Woolsey/Beamish (2003), p. 444, Lawson (1997), p. 169.

¹⁵³ Dobbins (2004), p. 4.

¹⁵⁴ Dobbins (2005), pp. 27-28.

¹⁵⁵ DiMaggio/Powell (1983), p. 147.

¹⁵⁶ Streeck (2005), p. 255.

¹⁵⁷ Saxenia (1994).

¹⁵⁸ Granovetter (2005), p. 429ff.

¹⁵⁹ Granovetter (1985), p. 496ff.

¹⁶⁰ Dobbins (2005), p. 27.

¹⁶¹ Smelser/Swedberg (2005), p. 5.

limited to coercion, but also encompasses the ability to set norms and values or to influence political processes.¹⁶² Likewise, it need not be limited to the relationship between buyers and sellers or employers and employees, but extends to third parties that influence economic action through their normative power.

Conclusion

This thesis hypothesises that, through institutions, networks and power relations, the social context, in which PSCs operate, influences their economic actions. Specifically, building on Granovetter's *Theory of Embeddedness* and the scholarship it has produced in economic sociology, this thesis argues that PSCs are motivated by financial profit as well as by a desire to adhere to social conventions.

This alternative approach to PSCs' incentives opens up a new analytical perspective on their opportunities to engage in problematic behaviour. First, the presence of considerations other than financial profit renders some behavioural options unviable, because the associated price of violating social conventions is not offset by financial profit. Secondly, non-financial motivations open up new behavioural opportunities that previously, in a purely profit-oriented assessment, would have made little sense. Thus, PSCs may pursue what is financially a second-best option, because it conforms to dearly held social conventions. This differs from the prevalent behavioural model, according to which PSCs would seize **any** opportunity for misconduct as long as prospective profits exceed expected negative financial consequences.

In sum, the proposed alternative behavioural model does not suggest that PSCs cease to be rational actors nor that they are no longer interested in financial profit. Instead, it argues that their hierarchy of preferences prominently includes non-financial motives. This alternative model can therefore explain the presence of professional behaviour **and** misconduct and, thus, seems to better fit the available evidence.

¹⁶² Dobbins (2005), p. 27.

Section Six: The Relationship between Profit and Conventions

Despite its emphasis on the 'embeddedness' of PSC behaviour, this thesis is acutely aware of the risk of "oversocializing" PSC decision-making, i.e. of losing sight of the importance of economic motives in favour of non-financial concerns. Such an 'oversocialized' view would distort PSCs' economic actions in a manner not dissimilar to the 'undersocialized' view neo-classical economics and by extension the prevalent behavioural model relies on.¹⁶³ This section therefore takes a closer look at the relationship between financial and non-financial motives in PSC decision-making to determine under what circumstances either one "carries the day".

When Do PSCs Adhere to Conventions?

Adherence to conventions does not *per se* imply appropriate behaviour and neither does the pursuit of financial profit invariably result in misconduct. Indeed, adherence to conventions may inspire problematic behaviour, e.g. when military values inspire individual contractors to engage in offensive military operations. Also, while market exchanges 'are shaped by, and depend on, other social relations',¹⁶⁴ profitability remains the *sine qua none* of corporate life.¹⁶⁵ A company that ignores its profits in favour of social conventions will go bankrupt. Likewise, a PSC that disregards social conventions will be shunned by its clients and eventually fail. Hence, this thesis argues that profitability (unlike profit-maximization)¹⁶⁶ is generally not only compatible with obeying conventions, but dependent on it.

One way to illustrate why behaviour that seemingly runs contrary to the profit motive of PSCs, i.e. obeying conventions, can be vital for their profitability is to distinguish between short-term and long-term profitability. As previously argued, the relationship between PSCs and their clients is prone to hold-up problems, as PSCs' operational environment renders *a priori* specification impossible and an ad hoc change in supplier problematic. A PSC set on maximising its short-term profit can exploit this situation, but it can also continue to reliably provide its services. The foregone short-term profits – "opportunity costs" in the parlance of

¹⁶³ Granovetter (1985), p. 483.

¹⁶⁴ Carruthers/Babb (1999), p. 7.

¹⁶⁵ *Ibid.*, p. 3.

¹⁶⁶ Armen Alchian distinguishes between abstract 'profit maximization[, which] is meaningless as a guide to specifiable behaviour', and profitability, which is the actual 'mark of success and viability' in the corporate world (Alchian (1950), p. 211+213).

economists¹⁶⁷ – are then an investment made in the hope that, in the long-term, the PSC's good reputation will attract new business, while maximising its short-term profit is more likely to be punished by its clients.

This thesis will describe various ways in which conventions influence PSC behaviour. The discussion above merely serves to illustrate that adhering to conventions in most cases benefits PSCs' profitability.¹⁶⁸ The distinction between long- and short-term profits also raises another problem that the PSC literature has ignored to date, but that will feature prominently in this thesis. According to Armen Alchian, profit-maximising behaviour is predicated on 'complete information' and 'certain foresight'.¹⁶⁹ PSCs have to know which behaviour maximises their financial profit, taking into account the long-term consequences of their actions. Given their challenging operational environment and the volatility in the market for PSC services, it is questionable if perfect information and certain foresight are a reasonable assumption. Instead, PSCs are faced with considerable uncertainty and ambiguity. Adherence to conventions thus helps PSCs overcome such information constraints.

When Does Profit Trump All?

If, indeed, adherence to conventions is frequently a pre-condition for profitability, this raises the question as to under what circumstances PSCs disregard social conventions in favour of financial profit?

As previously noted, many instances of problematic behaviour do not necessarily represent PSC misconduct, but are instead attributable to individual employees, temporary lapses in oversight or to the nature of the service and operational environment. While, at times, the potential profit of misconduct may exceed the costs of violating social conventions, interviews, suggest that such circumstances are rare, once long-term consequences are taken into consideration.¹⁷⁰ Indeed, PSC representatives frequently point to the *Nisoor*

¹⁶⁷ Bannock *et al* (2003), pp. 284-285.

¹⁶⁸ Wolfgang Streeck makes a similar argument for economic action in general (Streeck (1999), p. 197).

¹⁶⁹ Alchian (1950), p. 211. The effects of limited information on economic action have yet to be explicitly recognized in the literature on PSCs. Robert Knight concurs with Alchian that the same applies to neo-classical economics (Knight in Smelser/Swedberg (2005), p. 3). On ambiguity, see March (1978), p. 589ff.

¹⁷⁰ Kroha (2009), Claridge (2010), Donald (2006).

Square incident.¹⁷¹ However profitable Blackwater's aggressive posture may initially have been, ultimately, it imperilled the company's business.¹⁷² Within the prevalent behavioural model, which abstractly weighs the costs and benefits of various behavioural options, it is difficult to explain why a company would employ such aggressive posture despite its evident long-term risks. The approach proposed by this thesis stresses the importance of cognition, i.e. how PSCs perceive themselves and their environment. Specifically, it uses Herbert Simon's concept of "bounded rationality", which views an actor's choice as constrained by his/her 'cognitive limitations' and the 'structure of the environment',¹⁷³ to argue that a PSC's subjective assessment of its social and economic situation may differ considerably from any abstract, objective evaluation. PSCs may therefore flout convention because they are unaware of or fail to interpret an applicable convention correctly. Likewise, a company may misjudge its position in the market, leading it to violate conventions because it believes its clients unable to sanction its behaviour. Hence, it is arguably less the social or economic context *per se* that determines a PSC's behaviour, but its limited and often biased perception of its environment.

The Limits of the Alternative Behavioural Model

Finally, it is worth considering the limitations of the proposed behavioural model. First, a PSC needs to be in a situation that economically permits the adherence to conventions. A company teetering on the brink of bankruptcy in a market characterized by cut-throat competition may have to focus on short-term profits to ensure its survival, even if such behaviour endangers its long-term profitability. Secondly, PSCs' market positions cannot be such that they are insulated from the consequences of violating conventions. A monopolist need not adhere to conventions, because clients cannot sanction it for lack of an alternative. Much as the social context influences the economic actions of PSCs, the economic context delimits the influence of social conventions. In deciding whether to adhere to or violate conventions, abstract measures of competitive pressure are less decisive than a PSC's perception of competition. This is particularly salient, given the high level of uncertainty and ambiguity in the PSI.

¹⁷¹ In September 2007, a *Blackwater* PSD came under fire in Nisoor Square, Baghdad. During the ensuing firefight, 17 civilians were killed (BBC (2008 II)). The incident led to *Blackwater's* license to be revoked and a FBI investigation later found 14 of the 17 deaths to be unjustified killings (Horton (2007)).

¹⁷² Cole/Chon (2009), O'Harrow (2009), Sauer/Chuchmach (2009).

¹⁷³ Gigerenzer/Selten (2001), p. 4. See also Simon (1957), p. 196.

This stresses the need to reappraise not only the social context in which PSCs operate, but also their economic environment. This thesis will show that the polar opposites of hyper-competition and monopoly demarcate the limits of the alternative behavioural model and help to explain variations in PSC behaviour. What emerges can be described as a bell-curve: At the extremes, where there is either no competition or competition is absolute, conventions matter little. On the fringes, where competition is either very strong or very weak, their effect is likely low. In the midst of the spectrum, however, where the vast majority of PSCs arguably operate, market and social pressures combine in PSC decision-making.

Conclusion

Conceptually, the alternative behavioural model provides a more nuanced view of PSC decision-making. However, it is not merely an extension of the prevalent behavioural model that just adds conventions to its analysis. Instead, it turns the prevalent behavioural model on its head: Rather than being solely motivated by profit, PSCs generally behave in accordance with prevailing social conventions, i.e. they aim to serve their clients loyally and reliably within the norms and values of wider society. It further argues that problematic behaviour not only occurs less frequently and for different reasons than previously assumed, but also that it is largely avoidable without the use of costly formal regulation, intrusive monitoring and severe sanctions. This nuanced view of PSC behaviour, which combines social and economic influences and emphasises the importance of cognition, has significant implications for this thesis's scope, methodology and data generation.

Section Seven: Methodology

In essence, this thesis argues that adherence to conventions at times displaces the profit motive in PSCs' decision-making. The analysis of conventions and of their impact on economic action, however, poses a number of methodological challenges.

How to Study Conventions

Conventions are often uncoded and implicit, and PSCs may not be conscious of their adherence to them nor of their impact. To make them visible, research needs to take into account institutions, networks and power relations. The literature's equation of PSCs with

their management ignores conventions that primarily affect or originate with their employees and clients. Yet, such conventions may be decisive for PSC decision-making. To assess their impact, one therefore has to study context not conventions *per se*. Moreover, PSCs, their employees and clients can simultaneously be part of numerous networks, subject to various power relations and affected by multiple conventions. An analysis of conventions therefore has to also identify and focus on a specific set of networks and their influence. Another reason why such a narrower, more targeted approach seems appropriate is the specificity of conventions to the members of a network. Neo-classical economics conceptualizes markets as 'single economic systems'¹⁷⁴ and, similarly, the PSC literature treats the PSI as a single, global market.¹⁷⁵ This approach invariably overemphasises global networks, whose loose, heterogeneous membership limits the scope and strength of their influence.¹⁷⁶ Smaller networks, whose membership is more sharply defined and whose influence on PSC behaviour may be stronger, are all but ignored. An analysis of conventions should therefore be deep in its understanding, holistic in its approach and narrow in its scope.

However, such a holistic approach poses its own challenges. One limitation with important methodological implications is that 'data on PSCs and their activities are in short supply'.¹⁷⁷ In general, this assertion is debatable,¹⁷⁸ but, with respect to conventions and their underlying institutions, networks and power relations in the PSI, it certainly applies. Given this lack of data and the PSC literature's limited engagement with the analysis of PSCs' economic actions in their social context, this thesis does not aspire to present an account of thoroughly verified causal relationships. Instead, it hopes to provide an initial, tentative understanding of how conventions, institutions, networks and power relations influence PSC behaviour – a stepping stone that future research can hopefully verify and expand on.

The exploratory character of this thesis is further evident in how it addresses another important limitation, namely the need to identify which of the many conventions, institutions, networks and power relations exert the greatest influence on PSC behaviour. While the thesis draws on the applicable literature in economic sociology, its analysis in the

¹⁷⁴ Carruthers/Babb (1999), p. 10.

¹⁷⁵ See Chapter 2 Section 3.

¹⁷⁶ Hansen (2000).

¹⁷⁷ Berndtsson (2009), p.15.

¹⁷⁸ See below and Chapter 2 Section 8.

specific context of the PSI is inspired by Barney Glaser's and Anselm Strauss' concept of grounded theory, i.e. 'the systematic discovery of [...] theory from [...] data'.¹⁷⁹ It is important to note that this thesis' use of grounded theory is nevertheless limited insofar as it does not aspire to generate inherently new theories.¹⁸⁰ Instead, one of its original contributions lies in the adaptation of economic sociology to studies of the PSI. Within this more limited aim, grounded theory is used to understand how conventions, institutions, networks and power relations manifest, interact and influence behaviour in the specific context of the PSI.

In particular, a series of initial interviews was used to identify recurring themes in the 'meanings participants [i.e. PSCs, their employees and their clients] attach to their behaviour'.¹⁸¹ Subsequent interviews reshaped and refined these themes and grouped them into three aspects of PSC behaviour,¹⁸² which, with one chapter dedicated to each, provide the core of this thesis:

- **The Individual PSC (Chapter Three)** explores decision-making processes within PSCs, the competing interests of PSCs and their employees and the role of professionalism in resolving conflicts of interests.
- **The Market of PSC Services (Chapter Four)** discusses the PSC literature's understanding of monopolies and analyses the competitive pressure in the PSI and its effect on PSC behaviour.
- **The Relationship between PSCs and their Clients (Chapter Five)** focuses on how (contractual) relations influence PSC behaviour.

Three themes emerged in the process of identifying those conventions, institutions, networks and power relationships that are of relevance for the PSI, namely professionalism, competition and (contractual) relations. The importance of these themes was further

¹⁷⁹ Glaser/Strauss (2008), p. 3.

¹⁸⁰ Glaser and Strauss suggest that the generation of new theories is the *raison d'être* of grounded theory (Glaser/Strauss (2008), p. 8.

¹⁸¹ Devine (2002), p. 199.

¹⁸² This process was strongly influenced by Glaser/Strauss' "constant comparative method" (Glaser/Strauss (2008), p. 101ff).

confirmed by their prominence in the PSC literature, which however judges their influence to be too weak to effectively control PSC behaviour.¹⁸³

The Available Data on PSCs and Its Problems

This raises the question as to what kind of data is needed to determine the influence of conventions on PSC behaviour. A frequent complaint in the PSC literature concerns the lack of empirical data,¹⁸⁴ which is blamed on the industry's insistence on corporate confidentiality.¹⁸⁵ While such concerns may have initially been valid, given that the widespread use of PSCs is a relatively new phenomenon, *Freedom of Information* releases, government reports, academic research and media coverage unearthed a vast amount of data in recent years.¹⁸⁶ Unfortunately, the available data is unevenly distributed. On some topics – the US government's use of PSCs¹⁸⁷ and their legal status¹⁸⁸ – data is plentiful. On labour relations, competition and client relations, however, little is known to date. This lack of data is particularly pronounced when it comes to PSCs' perceptions, i.e. the very kind of data needed to analyse the impact of conventions on their decision-making.

Filling the Data Gap: The Qualitative Interview

Corporate confidentiality and physical insecurity make it impossible to obtain additional information about PSC behaviour by directly observing it.¹⁸⁹ There are, however, other ways to ascertain PSCs' perceptions of their socio-economic environment: Many PSCs file annual reports; clients and PSCs publish trade journals, online newsletters and websites and individual contractors write biographies, blogs and in forums. Also, secondary sources like academic research and media reporting contain useful information.¹⁹⁰ Yet, these sources of data are each limited in their usefulness by their specific purpose. Annual reports, for instance, are aimed at satisfying fiduciary duties, not at giving an honest assessment of a PSC's market situation. Moreover, one simply cannot probe an annual report or challenge an

¹⁸³ Initial interviews confirmed that PSCs also consider these issues to be important factors in their decision-making (Smith (2005), Donald (2005), Worcester (2005)).

¹⁸⁴ Kinsey (2006), p. 6, Berndtsson (2009), p. 19.

¹⁸⁵ Messner/Gracielli (2006), p. 7. Kinsey (2006), p. 1. See also Chapter 6 Section 5.

¹⁸⁶ Bruneau (2011), p. 111.

¹⁸⁷ CWC (2010) and (2010 III).

¹⁸⁸ Elsea *et al* (2008), p. 14ff, Caparini (2007), p. 158ff, Dickinson (2007), p. 217ff. On the PSI's attitudes to regulation, see Westropp (2004), Beese (2004).

¹⁸⁹ Silverman (2007), p. 37.

¹⁹⁰ Examples include Spicer in Baer (2007), Gary Jackson in Yeoman (2003), Wolf Weiss in Durkin (2004), Matt Mann in Bergner (2005).

online newsletter to ascertain a deep understanding of PSCs' attitude to their socio-economic context.¹⁹¹

Hence, this thesis draws on forty-nine semi-structured interviews, altogether about 350 pages, in addition to the aforementioned sources. These interviews allow this thesis to dig deeper and to make an original contribution to the PSC literature by exploring issues not addressed elsewhere. However, said interviews were also strongly informed by the aforementioned sources and often served to complement them by verifying data. This partial interdependence makes it hard to quantify the thesis' reliance on interviews relative to other sources. Generally, a balance was sought between interviews and other sources of data, but on key issues like the attitudes of PSCs, their clients and employees these interviews were the primary source of information. Given the important role interviews play in this thesis, the following section will take a closer look at their design and purpose.

Section Eight: Purpose, Design and Use of the Interviews

According to Herbert and Irene Rubin, '[q]ualitative interviewing is a way of finding out what others feel and think about their world',¹⁹² which is exactly what the interviews conducted for this thesis tried to achieve with respect to PSCs, their employees and clients. Ideally, qualitative interviews are 'conversational partnerships'¹⁹³ that allow interviewees to express their understanding of their environment¹⁹⁴ and interviewers to probe deeper and challenge their statements.¹⁹⁵ An obvious drawback of qualitative interviewing is their time-intensiveness.¹⁹⁶ This further stresses the need to narrow the focus of this thesis, which this chapter will return to at a later point.

Sample Selection and Viability

The purpose of interviews is not 'intrinsic' but 'instrumental',¹⁹⁷ i.e. the thesis wants to generalize from the specific interview information to the UK PSI as a whole. Hence,

¹⁹¹ Devine (2002), p. 199.

¹⁹² Rubin/Rubin (1995), p. 1.

¹⁹³ *Ibid.*, p. 79. See also Kvale (1996), p. 5ff.

¹⁹⁴ Rubin/Rubin (2005), p. 83.

¹⁹⁵ *Ibid.*, pp. 118-119.

¹⁹⁶ Kvale (1996), p. 103.

¹⁹⁷ Stake (2003), p. 136ff.

interviews need to be, in the aggregate, representative of the PSI. The study of PSCs presents two obstacles to producing such a representative sample:

Information: Unfortunately, there is no authoritative list of UK PSCs providing armed perimeter, convoy or personal security in Iraq and Afghanistan in 2003-2008. Moreover, the volatile security environment and the apparent ease with which new companies entered the PSI render the identification of a viable sample challenging. One way to address this challenge is to identify the largest PSCs and ensure their inclusion in the sample.¹⁹⁸ Large PSCs are not solely important due to their size, but they also exert greater political influence and are often emulated by smaller competitors.¹⁹⁹ Using lists from the BAPSC, the US Embassy in Baghdad and the PSCAI,²⁰⁰ as well as various publications on PSCs²⁰¹ and conversations with industry experts and PSC representatives, this thesis identified ten UK companies among these “key players”. Seven of them were successfully interviewed for this thesis. The sample was further complemented with interview data from smaller UK PSCs. The aforementioned information-related problems were exacerbated with the more numerous and less visible, smaller PSCs. Fortunately, two PSC representatives provided access to their respective companies’ global lists of PSCs.²⁰² Based on this information, sixteen additional UK PSCs were identified, eight of whom agreed to be interviewed for this study.

Finally, while many studies on PSCs include interview data, they are generally limited to managerial staff and omit employees and clients.²⁰³ In contrast, two aspects informed this thesis’ sample selection with respect to PSC clients: First, genuine private sector demand is often overlooked in favour of public sector institutions, i.e. DoD, DoS and FCO, and their prime contractors, despite the private sector’s often extensive experience as PSC customer. Secondly, private sector demand for PSC services is often reduced to extractive industries, but initial interviews strongly suggested that the private sector clientele of UK PSC is considerably more diverse.²⁰⁴ Hence, this thesis took great care to include interviews with

¹⁹⁸ Berndtsson (2009), p. 27.

¹⁹⁹ Ming-Jer Chen argues that smaller companies often emulate rather than compete with larger companies (Chen (1996), p. 102) and interviews suggest that this applies to some UK PSCs (Thompson (2008), Ashwell (2008)).

²⁰⁰ BAPSC (no year III), US Embassy Baghdad (no date), PSCAI (no year).

²⁰¹ Avant (2005), p. 10ff, Corporate Watch (2006).

²⁰² These PSC lists may not be exhaustive, but it accurately depicts the PSI as perceived by PSCs themselves.

²⁰³ See Chapters 3 and 5 for further discussion.

²⁰⁴ Beese (2005), Worcester (2005), Donald (2005).

private sector customers from a variety of backgrounds, including banking, insurance, development. With respect to PSC employees, this thesis identified three groups that needed to be included: managerial staff, including employees with no military background and personnel stationed “in-theatre”. While conducting interviews with PSC clients and managerial staff was relatively easy, interviewing PSC personnel “in-theatre” confronted considerable access problems.

Access: Molly Dunigan rightly notes that obtaining primary data on PSCs is ‘extremely difficult’.²⁰⁵ First, security concerns make fieldwork in PSCs’ areas of operation difficult, which complicates interviewing PSC employees “in the field”. When face-to-face interviews were impossible, this thesis relied on interviews via telephone and email. Moreover, this thesis especially targeted PSC employees that maintained blogs or newsgroups. As these PSC employees receive frequent feedback from their peers, interviewing them provides an insight into shared sentiments among PSC employees. One interviewee likened his situation to that of an information node in a network: ‘My readership is pretty strong and [...] definitely keeps me in line and informed. [...] They help me see the bigger picture’.²⁰⁶ By accessing these “nodes”, the thesis is able to identify general trends in how PSC employees see themselves and their work. Secondly, generating primary data about PSCs is complicated by concerns about corporate confidentiality, which cause PSCs, their clients and employees to frequently decline requests for interviews. Hence, the response rate to more than 200 interview requests was less than 5%,²⁰⁷ while the remaining interviews were generated through the use of *snowballing*, i.e. interviewees were invited to suggest future participants and to introduce the study to them. One drawback of this technique is the risk of bias.²⁰⁸ By selectively recommending participants, interviewees can “shape” the author’s information. There are two ways in which this study sought to compensate for said risk: It used multiple starting points rather than a single chain of referrals and it relied on triangulation to control for bias.

²⁰⁵ Dunigan (2011), p. 48.

²⁰⁶ Loe (2010).

²⁰⁷ Such a relatively low response rate seems to be common for PSC studies (Berndtsson (2009), p. 27, Messner/Gracielli (2006)).

²⁰⁸ Heckathorn (2002), p. 14ff.

Steinar Kvale notes that ‘the number of subjects necessary depends on a study’s purpose’.²⁰⁹ This study’s purpose is not to predict the behaviour of specific individual PSCs, let alone their individual representatives and employees. Instead, its focus lies on the UK PSI as a whole and discusses how companies behave in response to the conditions present in said industry. Given this thesis’ specific focus and the measures outlined above, the sample presented above is viable despite the aforementioned concerns about information and access. Still, rather than solely focussing on its viability, i.e. whether the sample is sufficiently representative of it to make any claim about the UK PSI as a whole, it is important to highlight the sample’s limitations and their possible implications for the intended analysis. Two concerns seem to be particularly pertinent, namely the question whether large and small PSCs describe the UK PSI exhaustively and the relative weight of PSC representatives and employees in the sample.

First of all, this thesis, by including both large and small UK PSCs, relies on a more representative sample than is common in the PSC literature.²¹⁰ Still, critics may argue that the sample excludes even smaller outfits that form *ad hoc* in response to specific contractual demands and exist only temporarily.²¹¹ The spectre of such “cowboy” companies is often raised by critics and PSI representatives alike, along with the charge that they are largely responsible for misconduct in the industry. While the existence of such very small, often temporary private security providers is not in doubt,²¹² there is no data to support the significance attributed to them, both in economic terms and in terms of their share of the industry’s misconduct. Moreover, their limited impact on the UK PSI is evident in the fact that, when discussing issues like competition, inter-industry cooperation and PSC regulation, none of the interviewees mentioned such very small, often temporary PSCs as a relevant factor. Given their lack of significance in the context of the UK PSI as a whole, it was decided

²⁰⁹ Kvale (1996), p. 102.

²¹⁰ Peter Singer’s seminal work *Corporate Warriors*, for example, uses just three companies to describe the global trade in private security and military services (Singer (2003), p. 101ff., 119ff. and 136ff.).

²¹¹ The author would like to thank Gerhard Kümmel for raising this point.

²¹² This thesis discusses two examples, namely freelancing and extreme boutique companies (see Chapter 3 Section 4 and 6).

to exclude these very small, often temporary companies from the sample. Therefore, this thesis' analysis may not fully apply to such temporary outfits.²¹³

As to the relationship between PSC representative and employees in the thesis' sample, a clear-cut distinction between the two is often difficult to make, as mid-management positions can be classified both as PSC employees and representatives.²¹⁴ Also, many interviewees have been both employees and representatives in the course of their career in the UK PSI and their responses to the interview questions are often a blend of these experiences. Still, the emphasis in the sample clearly lies with UK PSC representatives. This is largely a function of the thesis' focus, which lies on the UK PSI and on corporate decision-making in said industry. While bottom-up dynamics are an important factor in determining the actions UK PSCs take,²¹⁵ individual employees exert less influence on the decisions PSCs take as a corporation than their managerial counterparts. This imbalance therefore does not negatively affect the viability of the sample. However, given its limited scope, the thesis' analysis is limited to the effect of PSC employees' influence on corporate decision-making processes, which leaves crucial questions about the influence itself – how it forms, how it is affected by outside influences, etc. - unanswered. Likewise, future research will have to show whether the conclusions this thesis draws with respect to corporate decision-making are also applicable to the decision-making processes of individual PSC employees.²¹⁶

Challenges I: Trust during the Interview

Even after accepting an interview request, interviewees remained cautious about the information they shared – hardly ideal circumstances for “conversational partnerships”.²¹⁷ This cautionary stance was somewhat alleviated by the interview process (see below). Moreover, *snowballing* greatly helped in overcoming this initial trust deficit. PSCs, which had previously categorically refused to be interviewed, participated in the study after being introduced via *snowballing*,²¹⁸ even when the parties did not know each other personally, but only by reputation. The use of *snowballing*, however, required additional care to protect

²¹³ While the dynamics within such temporary outfits are likely very different from the decision-making processes of UK PSCs as analysed in Chapter 3, the extent to which Chapter 4's analysis of competition in the market for security services applies to them has to be determined by future research.

²¹⁴ See Chapter 3 Section 1 for a more detailed discussion.

²¹⁵ See Chapter 3 for a detailed discussion.

²¹⁶ This thesis' conclusion will return to this issue, outlining how future research may address these questions and speculating what results it may yield (see Conclusion, Part II).

²¹⁷ Fontana/Frey (1998), pp. 59-60.

²¹⁸ This idea was taken from Marshall/Rossmann (1995), p. 61ff.

these “gatekeepers”:²¹⁹ No identifiable part of any previous conversation was shared with subsequent interviewees, even when a “gatekeeper” had brokered the interview.

Challenges II: Data Verification and Triangulation

Another challenge was how to verify interview data. Faced with the prospect of costly regulation, PSCs have an incentive to distort data to present themselves in a favourable light. To verify their statements, this thesis relied on data triangulation. According to Alan Bryman, the term triangulation is commonly used to describe research that mixes methodologies, while ‘data triangulation’ is the less controversial combination of different sources of information.²²⁰ This thesis triangulated data across interviews by speaking to PSCs, their employees and clients and it triangulated data across different types of sources. Corporate reports, for example, were very useful in this respect, because legal requirements limit the extent to which PSCs can shape the information they contain. This last point highlights that triangulation not only verifies data, but increases an analysis’ ‘richness and complexity’²²¹ by adding information, e.g. profit figures, that is unlikely to come up in interviews.

Challenges III: Trust and Freedom vs. Focus

Any interview has to balance two aims: (1) engendering sufficient trust and giving interviewees the freedom to express their views, whilst (2) keeping the conversation focused. To foster trust through transparency, participants were presented with the list of interview questions ahead of time. They were also made aware that the questions exceeded the allotted time and encouraged to choose which issues to focus on, thereby allowing them to ‘steer [or, at least, co-pilot] the conversation’.²²² To keep the interviews focused, semi-structured interviews were chosen²²³ and questions were structured in four categories:

Background: Interviewees were asked to describe their professional career and how the PSI had changed in recent years. This introductory part provided first insights into how interviewees view their social and economic context.

Individual PSCs: This section focused on how interviewees experienced power relations between managerial and non-managerial staff. Professionalism would frequently be

²¹⁹ Oliver (2010), p. 39ff.

²²⁰ Bryman (forthcoming), pp. 2-3, See also Blaikie (1991), p. 122ff.

²²¹ Bryman (forthcoming), p. 4.

²²² Rubin/Rubin (2005), p. 15.

²²³ Punch (2005), pp. 169-170.

mentioned and interviewees' understanding of the concept probed by follow-up questions.²²⁴

The Market for PSC Services: Interviewees were asked to describe the market for PSC services and its level of competition. Follow-up questions targeted interviewees' views on their clients' competence and on PSCs' abilities to develop strategies to compete in PSI.

The Relationship between PSCs and their clients: These questions focused on client relations in the PSI, especially on contract (re-)negotiations. Interviewees were asked to describe common problems affecting client relations and their resolution. Follow-up questions explored quality control measures, personal networks and their influence on contractual relations.

Challenge IV: Interviewees' Preferences and Fealty to the Interview Data

Finally, the use of data generated from qualitative interviews poses two challenges, which concern specifically the use of citations in this thesis. First, successfully conducting interviews in the PSI requires the establishment of trust relationships - prior to the interview to engender participation, during the interview to generate usable data and, crucially, after the interview to maintain participants' consent and for *snowballing* to be effective.²²⁵ While interviewees were generally happy to discuss the PSI, often with considerable frankness, many expressed a reluctance to be cited directly. Secondly, interviewees would often describe the PSI in striking statements, yet add qualifications and thus nuance to this initial assessment in the course of the interview. While tempting, given their concise and striking nature, merely citing their initial statements would distort the often much more subtle arguments the interviewees were putting forward. At the same time, the conversational nature of the interview often meant that interviewees would make qualifications to their initial statements at later points in the course of the interview. Drawing together the various aspects of their arguments would have involved citing lengthy passages from the interviews, which would have unnecessarily distracted from the underlying argument. In light of these concerns about interviewees' preferences/research ethics and the integrity of the interview data, the decision was taken to limit the use of direct citations from the interviews and,

²²⁴ Rubin/Rubin (1995), pp. 4-6.

²²⁵ See also Chapter 1 Section 9.

instead, to present the thesis' analysis and use the footnotes to highlight where it coincides/draws on interview data.

Section Nine: Research Ethics

Nicholas Walliman identifies two aims of ethical research: protecting the honesty and professional integrity of the researcher and avoid harm to research participants.²²⁶ In the case of qualitative interviews in the PSI, one may add a third aim: establishing the trust necessary for a successful interview. To meet these aims, this thesis used the *ESRC Framework for Research Ethics*, which emphasises four elements – information, voluntary participation, anonymity/confidentiality and appropriate use²²⁷ – and expanded them to meet the specific needs of this thesis.

Information: A project description was provided during the initial contact, expanded upon in subsequent correspondence and at the beginning of the interview. During said correspondence and prior to the interview, participants were encouraged to ask questions about the project. The project description contained a detailed outline of the project and the interview process, the proposed confidentiality arrangement and the intended use of the data. Also, a list containing all interview questions was previously submitted to participants and interviewees were asked to provide feedback on the interview process.²²⁸

Voluntary participation: Consent to participate in the study was obtained during the initial correspondence and reaffirmations were sought at the beginning of the interview and during the transcription process. Interviewees are very much ‘the owner[s] of the data they provide’ and, as such, participants were offered to withdraw their consent at any point.²²⁹ The sharing of interview questions ahead of time greatly strengthened interviewees’ ability to give informed consent. Moreover, the opportunity to steer the conversation allowed interviewees to avoid questions without having to explicitly refuse them.

Anonymity/confidentiality: Feedback to initial interviews indicated that the use of recording devices would not be possible. This led to the development of a transcription process with considerable implications for ensuring confidentiality and anonymity. Notes were taken during the interview and a non-verbatim transcript was later produced. To avoid omitting or

²²⁶ Walliman (2011), pp. 42-43.

²²⁷ ESRC (2010). The procedures outlined here were developed to be in conformity with KCL ethics. However, since this thesis commenced prior to the formalisation of the full review process, it was not required to undergo the formal approval process (an email confirming this was attached to the RD-1 form for this thesis).

²²⁸ Ruane (2005), pp.17-19.

²²⁹ Oliver (2010), p. 31. See also the ESRC’s concept of ‘enduring consent’ (ESRC (2010), p. 39).

distorting data during transcription,²³⁰ a copy of the transcript was submitted to the interviewee for review. Such review copies would also include requests for clarification and comments about how the statements could be used in this thesis.²³¹ The transcript would then be revised accordingly and re-submitted to the interviewee for approval.²³² Once a copy of the definitive transcript was sent to the interviewee for his/her records, the notes of the initial conversation were destroyed.²³³ During this process, interviewees were encouraged to indicate any passages they would like to have struck from the record and to determine how their statements should be attributed. Finally, fully anonymised “working-copies” of the transcripts were created with colour-codes indicating the various levels of attribution, while the definitive transcript and the key were securely stored.

Appropriate use: The purpose of the project and the role of the collected interview data was specified during initial contact and reiterated prior to the interview. The funding status of this research project was indicated to the interviewees²³⁴ and they were informed that their consent would not extend to any commercial use of the data.

Finally, while the interviews did not cover sensitive data, e.g. about operational security, or record personal information, special precautions were still taken in designing the interviews to protect participants from harm. For instance, the multiple-step consent process and the ability to change the record during the transcription process gave interviewees additional options to reconsider their consent and confidentiality/anonymity requirements. This was especially pertinent for telephone and email interviews, when the interviewee’s mental state could not be assessed.

²³⁰ Walliman (2011), p. 48, Oliver (2010), pp. 46-47.

²³¹ Rubin/Rubin (2005), pp. 76-77

²³² Oliver (2010), p. 63ff.

²³³ *Ibid.*, 65ff.

²³⁴ The project is self-funded.

Section Ten: The Scope of the Thesis

This final section makes the case for a narrow approach to the study of PSC behaviour and outlines its choice of focus. Specifically, this thesis focuses on UK PSCs that provided armed site, personal or convoy security between 2003 and 2009 in Iraq or Afghanistan.

The Scope of the Thesis I: The Case for a Narrow Focus

Even a perfunctory review of the literature shows that security privatization is defined very broadly:²³⁵ PSCs, i.e. private companies that provide armed personal, convoy and perimeter security, are grouped together with PMCs and various defence contractors, they are believed to compete in a single, global market and little significance is attached to the specific context from which they originate or in which they operate. This prevalent, broad approach poses three problems to the study of PSC behaviour:

First, the literature's definition is vague on which companies are considered to be part of this globally competing industry. It regards PSC behaviour largely as a function of their structural characteristics: their for-profit status motivates PSCs to maximise profit, while their private ownership enables them to pursue such behaviour. However, PSCs share these structural characteristics with a wide variety of companies. Consequently, such unlikely candidates as the *Economist Intelligence Unit* (EIU), *Oxford Analytica*²³⁶ and *BW Fuhrpark Service GmbH*²³⁷ have been classified as PSCs. It is questionable if the behaviour of companies as vastly different from one another as *Blackwater* and *EIU* can be discussed in a meaningful manner. Moreover, this approach ignores the behavioural implications of characteristics that are specific to certain types of companies and to the context in which they operate.²³⁸ In contrast, this thesis argues that UK PSCs' specific characteristics exert a more significant influence on their behaviour than the fact that they are private, permanent and profit-making.

Secondly, the notion that security privatization is a single, coherent phenomenon encourages "cross-pollination": Authors apply evidence from one type of company, e.g.

²³⁵ See Chapter 2 Section 2.

²³⁶ O'Brien (2002).

²³⁷ Petersohn (2006), p. 25.

²³⁸ Cockayne (2007), p. 196.

Sandline in Sierra Leone, to contemporary PSCs.²³⁹ This approach falsely assumes a historical continuity between PSCs and traditional private military actors, which invites inaccurate comparisons between PSCs, mercenaries and PMCs. Alison Stange, for example, suggests that ‘medieval Europe made extensive use of privateers, yet it was not the most desirable set of arrangements for liberty, equality and prosperity’, implying that the use of PSCs has comparable consequences.²⁴⁰ “Cross-pollination” can cause behavioural models to become “lopsided”, i.e. to be less applicable to contemporary PSCs than to actors that ceased to be relevant long ago.

Scope of the Thesis II: PSCs

This thesis’ decision to focus on PSCs is hardly controversial, given their prominent role in the contemporary academic debate. Yet, three more reasons justify this focus: First, PSCs are operationally important, as they enable mission-critical actors, e.g. NGOs and construction companies, to operate in post-conflict environments.²⁴¹ Secondly, their use of lethal force challenges core tenets of international law and traditional concepts of state sovereignty.²⁴² Finally, PSCs have garnered considerable interest beyond the academic realm, which is evident in, among others, movies, TV series, books and internet blogs.

Scope of the Thesis II: Iraq and Afghanistan 2003-2008

This thesis further narrows its scope to companies operating in Iraq and Afghanistan in 2003-2008. The PSCs in Afghanistan and Iraq have been subject to intense scrutiny in recent years. This ‘fishbowl effect’ will likely determine how PSCs are used and regulated in the foreseeable future.²⁴³ Interviews with PSC representatives confirm that the industry also perceives Iraq and Afghanistan as a ‘shift in paradigm’.²⁴⁴ Moreover, the volatility in the market for PSC services during said period offers a high level of in-case variation²⁴⁵: a largely dormant industry in 2003, a “bonanza” in 2004-2005 and a process of consolidation since 2005.²⁴⁶ Finally, the unprecedented scale of PSC use since 2003 and the corresponding media, political and academic interest unearthed a rich set of data. Altogether, this makes

²³⁹ See, for example, Spear (2006).

²⁴⁰ Stanger in CWC (2010).

²⁴¹ Marshall (2011).

²⁴² Ortiz (2009), p. 4ff, Kinsey (2005), p. 269ff. See also Chapter 6.

²⁴³ Spearin (2003), p. 27. See also Ortiz (2010), p. 3.

²⁴⁴ Worcester (2009). See also Isaacs (2010), Claridge (2010).

²⁴⁵ Van Evera (1997), pp. 82-87.

²⁴⁶ See Chapter 2.

PSCs in Afghanistan and Iraq from 2003 to 2008 not just a viable, but also an interesting and highly relevant case of study.

Scope of the Thesis III: UK PSCs

A more controversial choice is the thesis' focus on UK PSCs.²⁴⁷ Christopher Kinsey, for example, claims that 'it is impossible to write about PMCs without including US PMCs since they are at the forefront of the changes to private global security'.²⁴⁸ Indeed, while UK companies won large public sector contracts, notably *Aegis* and *Erinys*,²⁴⁹ Cockayne *et al* argue that US PSCs 'easily constitute the largest share of the global market'.²⁵⁰ Moreover, US PSCs are even more dominant in the realm of public perception, where *Blackwater* has become synonymous with private security.²⁵¹

Yet, there are several reasons why UK PSCs merit closer attention. First, while relatively little is known about the UK PSI,²⁵² it is widely recognized as the second largest segment in the market for PSC services.²⁵³ Moreover, successive UK governments have recognized the importance of the UK PSI. As Sir Michael Willcocks remarked in an interview, 'there are not many industries left in which the UK can clearly claim a leadership role'²⁵⁴ and the desire to assure the commercial viability of the UK PSI permeates the UK government's regulatory proposals.²⁵⁵ The sustainability afforded by this industry-friendly regulatory approach greatly adds to the importance of the UK PSI.

Secondly, UK PSCs are more integrated into the broader economy than their US counterparts. Prior to the recent conflicts in Iraq and Afghanistan, the companies that came to dominate the US PSI either did not exist (*Triple Canopy*, *Custer Battles*) or they were defence contractors focused on public sector contracts (*Blackwater*, *DynCorp*).²⁵⁶ While most UK PSCs were also only founded in the late 1990s and early 2000s,²⁵⁷ companies like *CRG*

²⁴⁷ This includes PSCs that originate from, are headquartered in or have a substantial presence in the UK.

²⁴⁸ Kinsey (2006), p. 14.

²⁴⁹ *Ibid.*, p. 105, Hodge (2006).

²⁵⁰ Cockayne *et al* (2008), p. 17.

²⁵¹ Baker (2011), pp. 2-3.

²⁵² Kinsey (2006), p. 14.

²⁵³ The Economist (2006), Bailes/Holmqvist (2007), p. 13, Cockayne *et al* (2008), p. 17.

²⁵⁴ Willcocks (2008).

²⁵⁵ Reed (2010), War on Want (2006), p. 17.

²⁵⁶ Ortiz (2009), p. 38, Cullen (2007), p. 239ff.

²⁵⁷ Examples include Blue Hackle (2004), Hart Security (1999) and Erinys International (2001).

(founded in 1975) and *Defence Systems Limited* (1981)²⁵⁸ had already established a business model focused on private sector clients that many UK companies subsequently emulated.²⁵⁹ When demand for PSC services exploded in 2003/2004, UK PSCs therefore already had a business model in place and a diverse clientele outside the public sector. This makes the UK PSI a particularly interesting case-study: If PSCs are as unreliable and disloyal as the literature suggests, how did their decades-long use by private sector clients in the absence of effective regulation lead to an industry that is generally well-regarded and lauded for its professionalism?

Chapter two will present further arguments for focusing on UK PSCs. Still, the US PSI, and especially the US government as a key source of regulation and demand are too important to be left out of this study entirely. Thus, this thesis attempts a careful balancing act that emphasises its regional focus without ignoring important external influences: In its discussion of the decision-making in individual PSCs (Chapter 3), the thesis maintains an almost exclusive regional focus on the UK PSI, while its analysis of the PSI's development (Chapter 2) features the US government and US PSI prominently. However, in the latter case, great care is taken to highlight how UK PSCs evolved in relation to broader, global trends and where they developed differently from their US counterparts. The same applies to the relationship between PSCs and their clients (Chapter 5): While their clientele is global, the focus of the analysis is on how said clientele affects the UK PSI. Here, it should also be noted that although governments all over the world use PSC services, in Iraq and Afghanistan from 2003-2008, US government demand held an exceptionally dominant role.²⁶⁰ Moreover, US government spending has been intensely analysed and debated – so much so that it has arguably been more influential when it comes to shaping UK PSCs' understanding of public sector contracting than the UK government's demand for PSC services. Thus, when this thesis discusses public sector contracting, the concept is heavily influenced by the US government's use of PSCs. Still, the focus of the analysis lies on how the public sector demand influences UK PSCs. Finally, the discussions of the market for PSC services (Chapter 4) and the regulation of the PSI (Chapter 6) necessitate a similarly global perspective, whilst likewise granting special attention to characteristics specific to the UK PSI.

²⁵⁸ ArmorGroup was founded in 1981 as Defence Services Limited.

²⁵⁹ Worchester (2005), Kinsey (2006), p. 103.

²⁶⁰ For the purpose of this argument CPA demand is subsumed under US government demand.

Conclusion

One drawback of this thesis' narrow focus arguably is a more limited applicability of its results. However, this section has shown that UK PSCs providing armed security in Iraq and Afghanistan in 2003-2008 constituted an important case that merits attention. Indeed, the specificity of its results may prove to be advantageous. Christopher Kinsey argues that, 'to politicians responsible for designing policy, [...] looking at activities as discrete issues makes the allocation of resources much easier than when all activities are simply labelled as one'.²⁶¹ For UK policymakers, this study may therefore represent invaluable input. Its narrow focus also allows this thesis to discuss the UK PSI at greater depth and include such previously overlooked aspects as the attitudes of PSCs' employees and (private sector) clients.

Finally, the argument this thesis proposes may be applicable beyond the UK PSI. For instance, lessons learnt from the UK PSI may be instructive to states like Germany and France, whose PSI is likely less focused on public sector demand than the US PSI.²⁶² In its conclusion, this thesis will indeed suggest that its core argument, that PSCs' social and economic context mitigates their profit-motive, is unlikely to be restricted to the UK PSI, yet it will also highlight that further research is needed to confirm this in greater detail.²⁶³

Outline of the Thesis

This thesis is divided into six chapters. **Chapter Two** will provide further background on the subject of this study by analysing the recent history of security privatization, the accompanying academic debate and the development of the UK PSI. It will highlight problems with the literature's broad view and its implicit notion of historical continuity. Finally, Chapter Two will review the contribution economics has made to the subject of PSCs.

Chapters Three through Five each focus on a distinct aspect of PSC behaviour: **Chapter Three's** analysis of decision-making in individual PSCs challenges the literature's conceptualization of PSCs as unified entities with a single, coherent motivation. Using the *Behavioural Theory of the Firm*, it argues instead that PSC decision-making processes are subject to competing interests and that military professionalism plays a key role in

²⁶¹ Kinsey (2011), p. 565.

²⁶² Stoppelkamp (2009).

²⁶³ Conclusion Section 2.

overcoming the resulting conflicts of interests. Indeed, it proposes that recourse to military professionalism helps PSCs to overcome the uncertainty and ambiguity they face.

Chapter Four focuses on the market for PSC services. It commences by pointing out flaws in the literature's argument concerning the lack of competition due to monopolistic structures. Using Michael Porter's *Five Forces Framework*, the chapter provides a more sophisticated view of competition in the PSI. It concludes that the market for PSC services is neither characterized by excessive nor weak competition. Finally, the chapter identifies differences in the intensity of competitive pressure among the five forces, thereby providing starting points for customers and policy-makers to enhance competition in the PSI.

Chapter Five focuses on client relations in the PSI. The chapter starts by critically reviewing the literature's use of the P/A problem to understand PSI client relations, especially its emphasis on the antagonism between the contracting parties and the abundance of opportunities for the agent to shirk. It goes on to show that this view of the contractual relationship is not compatible with the prevalence of long-term contracting and the importance of networks in the PSI nor with the close relationships and trust between PSCs and their clients. The chapter concludes by comparing private and public sector approaches to contracting, finding that the private sector's focus on relationships rather than contracts is remarkably successful in influencing PSC behaviour.

Chapter Six discusses the implications of this thesis' analysis on the debate on PSC regulation, specifically the PSC literature's regulatory aims and its assessment of existing international, national and self-regulation. It argues that PSC regulation is portrayed as a zero-sum game with high-stakes: Any regulatory leniency would be exploited by PSCs, resulting in problematic behaviour. Chapter Five concludes that this thesis' behavioural model suggests that the strict regulation, intrusive monitoring and harsh sanctions proposed by the literature may exacerbate rather than reduce problematic behaviour.

Chapter 2: The PSI - From Its Origins to the Bubble and Beyond

*Dig trenches?
With our men being killed off like flies?
There is not time to dig trenches.
We'll have to buy them ready made.
Groucho Marx¹*

This chapter provides further context to the subject of this study, the UK PSI in Iraq and Afghanistan between 2003 and 2009. In particular, it argues two points: First, the PSI is not as homogeneous as the literature suggests. Prior to 2003, there were considerable variations between the various private military and security providers included in the literature's typologies. Yet, the literature fails to account for these differences in its discussion of PSC behaviour. Moreover, the market for PSC services from 2003-2009 was more volatile and, hence, less homogeneous than has been acknowledged. Indeed, the chapter identifies two distinct periods: The "bubble", 2003-2004, describes a sharp increase in demand for PSC services triggered by the invasion of Iraq, while its aftermath, 2005-2009, describes a decline in demand and ensuing market correction. The impact of said volatility on PSC behaviour has so far been neglected by the literature. Instead, prevalent perceptions of the contemporary PSI are largely shaped by the "bubble", while changes that have occurred since have yet to be fully taken into account. This volatility and its specific effect on PSCs provide further justification for this thesis' choice of a narrow focus.

Secondly, the data about the market for PSC services is less complete than the literature assumes. Reliable figures are only available since 2007 and only for US and UK public sector demand. Yet, these data limitations and their implications are largely ignored. Instead, authors rely on rather unreliable sources to make up for the lack of data, which distorts the literature's account of the PSI. For instance, while the "bubble" is the period that most informs popular perceptions of the PSI in Iraq and Afghanistan, this period is particularly strongly affected by the lack of reliable data. Given the poor state of the available data, the chapter advocates alternative ways of generating insights into PSCs' behaviour and their

¹ Groucho Marx in Scobbie (1992), p. 71.

(market) environment. Such data suggest, among other things, that UK PSCs, after initially profiting from the “bubble”, were disproportionately affected by the slowing in demand since 2005 and it highlights the extent to which UK PSCs rely on private sector demand for their services.

Part one, sections one to three, focuses on security privatization prior to 2003. Section one discusses developments at the end of the Cold War, which are widely seen as responsible for the emergence of the contemporary phenomenon of security privatization. Section two analyses the literature’s efforts to develop a typology. Specifically, it critically reviews Peter Singer’s widely used *Tip-of-the-Spear* framework, which argues that private military firms (PMFs) share three structural characteristics: They are privately owned, for-profit and permanent. Section three challenges the notion of a homogeneous, global private security industry represented by Singer’s typology by discussing the UK PSI’s development.

Part two, sections four through seven, is devoted to the development of the PSI in Iraq and Afghanistan since 2003. Section four discusses the conditions and catalysts responsible for the “bubble”. It argues that developments specific to the situation in Iraq rather than those associated with the end of the Cold War are primarily responsible for the boom in the PSI in 2003-2004. Section five discusses the available data on the PSI in Iraq and Afghanistan and notes its ofte overlooked flaws. Section six analyses the “bubble” and its aftermath from the perspective of PSCs and their clients. It shows that, while the “bubble” was generated by an increase in demand for PSC services, changes to demand and supply were responsible for its deflation. Using corporate reports and interview data, section seven discusses the development of the UK PSI since 2003, specifically how it differs from its US counterpart.

Part three, sections eight and nine, complement Chapter One’s discussion of the use of economic concepts in the PSC literature. Section eight discusses economists’ treatment of PSCs. While Economics as a discipline has yet to discover PSCs, individual economists have ventured outside of their discipline to contribute to the PSC debate. Section nine argues that the literature’s distinction between private and public actors, which largely relies on John Donahue’s *The Privatization Decision*, does not do justice to the economic theory it draws on, especially Oliver Williamson’s work on transaction cost economics. The section also addresses economists’ and sociologists’ concerns about combining the two disciplines, which lies at the heart of this thesis’ approach.

PART I: The Private Security Industry Prior to 2003

Section One: The Origins of the Debate about Security Privatization

This section argues that the debate about security privatization prior to 2003 centred on two developments in the 1990s: the emergence of autonomous private military actors in the context of African security and increased outsourcing by the US military. It explores the reasons, which the literature presents for both developments, and shows how the literature's approach shapes its attempts at developing a typology.

Origins I: Executive Outcomes and Sandline International

The current debate about security privatization started in response to the emergence of *Executive Outcomes* (EO) and *Sandline International* in the 1990s,² which has been attributed to developments precipitated by the end of the Cold War.³ First, the fall of the "Iron Curtain" resulted in a cut in foreign military assistance that destabilized many African countries.⁴ Initially, increased peacekeeping seemed to meet this challenge,⁵ but soon policy-makers' concerns about their constituents' 'sensitivity to casualties' mounted.⁶ Moreover, the reduction in military spending after the Cold War – US defence spending shrank by 21% between 1986 and 1994⁷ – had depleted the capacity of many NATO and Warsaw Treaty Organization member nations to support their former allies in the developing world, particularly in the low-intensity intra-state conflicts characteristic of the post-Cold War world.⁸ Hence, bereft of public sector support and faced with increasing instability, governments in Angola, Mozambique and Sierra Leone turned to *EO* and *Sandline* for help.

Secondly, the developed world's reductions in military budgets inadvertently created an affordable supply of private security and military services. The dissolution of the Warsaw Treaty Organization and subsequent sales of military stockpiles led,⁹ according to Robert Mandel, to a widespread 'availability of arms'.¹⁰ The resulting flood of cheap firearms

² See Howe (1998), Mandel (2002), Musah/Fayemi (2000), Shearer (1998), Zarate (1998). For a detailed account of EO's corporate activities, see Singer (2003), p. 101ff. For Sandline, see Spear (2006), p. 25ff.

³ Kümmel (2004), p. 16ff.

⁴ Dagne (2011), p. 2, Mills/Stremlau (1999), p. 5. Clapham (1999), p. 37.

⁵ Farrell (2002), p. 287.

⁶ *Ibid.*, p. 297.

⁷ Cornetta/Knight (1997), Knight et al (1996), pp. 4-6.

⁸ Shearer (1998), p. 32.

⁹ Singer (2003), p. 53ff, Lock (1997), p. 120.

¹⁰ Mandel (2001), p. 130.

aggravated conflicts in the developing world¹¹ and provided *EO* and *Sandline* with easy access to military equipment.¹² More importantly, the reduction in military budgets created an ‘oversupply of dislocated military skilled labor’,¹³ as soldiers were released from military duty in droves.¹⁴ This oversupply decreased the costs of the skilled labour sought by companies like *EO* and *Sandline* and, thus, enabled the private provision of military and security services.¹⁵

EO and *Sandline* were neither the first nor the only companies to offer military and security services,¹⁶ but their actions and the prospect of private UN-peacekeeping dominated the early debate about security privatization.¹⁷ Given the nature of their service provision and the African continent’s recent history,¹⁸ for the UN to use *EO* and *Sandline*, they had to be clearly distinguished from mercenaries¹⁹ – an aim that strongly influenced subsequent typological debates.

Origins II: From African Security to Privatization in the US Military

By 1999, the demise of *EO*, the *Sandline Affair*²⁰ and the *Arms to Africa Affair*²¹ had dimmed the enthusiasm for private peacekeeping. Instead, attention shifted to changes in the US military, namely the large scale outsourcing of military services to the private sector.

Historically, private sector involvement in military matters was nothing new: Both George Washington and his British opponents made use of it – as did the US military in every subsequent war.²² Initially, however, privatization was a matter of necessity. The US government relied on privateering in the 19th century, because it lacked the finances to compete with the French or British navy.²³ As the US military gained greater capabilities,

¹¹ Singer (2003), p. 54.

¹² Kümmel (2004), p. 17.

¹³ Singer (2003), p. 53.

¹⁴ Kümmel (2004), p. 18, Avant (2006), p. 329.

¹⁵ Grunberg (2004).

¹⁶ Kinsey (2006), p. 76. See also Ortiz (2010), p. 37, O’Brien (2000), p. 60).

¹⁷ Singer (2003), p. 88ff, Kinsey (2006), p. 89.

¹⁸ See Mockler (1969).

¹⁹ Berndtsson (2009), p. 3. See also the Chapter 6 Section 1.

²⁰ In 1997, the government Papua New Guinea hired Sandline, but international pressure and military-led public protests eventually led to the cancellation of the deal and the resignation of Prime Minister Julius Chan (Dinnen (1999), p. 279ff).

²¹ In 1998, Sandline imported arms to Sierra Leone in violation of a UN embargo. A subsequent inquiry found that the company had informed the FCO of its plans ahead of time (Kinsey (2006), p. 72ff).

²² Avant (2006), pp. 327-328, Uttley (2006), pp. 4-10, Ortiz (2010), pp. 26-28.

²³ Thompson (1996), pp. 25-26.

private sector support became more limited.²⁴ According to Deborah Avant, this changed after WWII. In particular, the Vietnam War and the switch to The All-Volunteer Force reversed the previous ‘trajectory towards centralization’.²⁵ Now, contractors built and supplied military bases,²⁶ maintained weapon systems and trained soldiers in their use²⁷ and even assisted in doctrinal development.²⁸ The evolving US government policy position illustrates this shift and its limits: The 1966 OMB Circular A-76 encouraged the use of private sector support, but limited its scope to services that were neither ‘inherently governmental’ nor ‘directly involved in war fighting’.²⁹ While this tenet has not changed,³⁰ it has undergone a substantial reappraisal since the 1990s, resulting in a less restrictive understanding of what activities are “inherently governmental” and what constitutes “war fighting”.³¹

This reappraisal, which ultimately led the US government to become a major source of demand for PSC services, is generally attributed to developments at the end of the Cold War. First, the aforementioned decrease in the defence budget forced the military to change its force structure. To preserve the military’s war fighting capability, support functions were either cut or delegated to the private sector.³² Here, contracting was seen as a way to make ends meet. Secondly, the post-Cold War world had the US ‘committing troops in a broader and less predictable array of conflicts’,³³ i.e. asymmetric, low-intensity conflicts in far-away regions that were culturally and religiously very different. These conflicts required skills that the military did not have and could not develop quickly. Moreover, many of these skills were highly sought after in the private sector, making it hard to attract qualified personnel given the constraints of the military’s pay-scale.³⁴ Here, contracting offered a quick fix preferable to more expensive solutions. Thirdly, ideological factors promoted greater privatization, specifically the introduction of neo-liberal concepts under UK Prime Minister Margaret Thatcher and US President Ronald Reagan in the 1970s and 1980s.³⁵ Following the end of the

²⁴ Avant (2006), p. 327.

²⁵ Ibid., Stanger (2009), p. 85, Kinsey (2009), p. 18ff.

²⁶ Avant (2005), p. 12.

²⁷ GAO (2003), p. 8.

²⁸ Singer (2003), p. 119.

²⁹ Anderson (2008), p. 26ff, Avant (2006), p. 148). See also Defense Science Board (1996), p. 50a.

³⁰ Petersohn (2008), p. 21. See also DoD (2001), p. 53. While A-76 was revised several times, its tenet was left unchanged (See Anderson (2008), CWC (2010)).

³¹ Krahmann (2010), p. 119ff, Stanger (2009), p. 84ff, Verkuil (2007), p. 124ff.

³² Cancian (2008), p. 67

³³ Avant (2005), p. 115.

³⁴ Stanger (2009), p. 85.

³⁵ Mandel (2001), p. 129, Ortiz (2004), p. 207, Spear (2006), p. 14ff., Krahmann (2011), pp. 84-85.

Cold War, the spread of market liberalism into previously bureaucratically organized aspects of society greatly accelerated. Here, contracting was presumed to result in increased institutional efficiency.³⁶

The literature cites further drivers for privatization, which were accelerated rather than caused by the end of the Cold War. For instance, privatization was seen as a way to quickly integrate new technology into the battle-space.³⁷ As *The Economist* notes, ‘innovation used to spill over from military and corporate laboratories to the consumer market, but lately this process has gone into reverse’.³⁸ Also, contemporary conflicts are more likely to have a significant reconstruction/nation-building component.³⁹ Yet, the military lacks capacities for providing the required services and other government institutions tend to be ill-suited for operations in high-risk environments.⁴⁰ Here, contracting made services accessible that would otherwise have been unavailable.

Conclusion

Against this background, the PSC literature concludes that ‘the US cannot go to war without contractors’.⁴¹ Yet, while this assessment may be accurate, it misses an important point. What the literature describes as a fairly coherent phenomenon encompasses a range of very different actors providing a range of different services for different reasons and, by no means, solely to the military. Finding a suitable typology that encompasses all actors as well as companies like *EO* and *Sandline* and that accurately distinguishes them from traditional private security and military actors, i.e. mercenaries, presented a considerable challenge to the PSC literature, as the next section shows.

³⁶ Rumsfeld (2001).

³⁷ Singer (2003), pp. 62-63, Kinsey (2006), pp. 95-96.

³⁸ *Economist* (2011). See also *Economist* (2011 II).

³⁹ Crane (2005), p. 28ff.

⁴⁰ *Ibid.*, Kinsey (2009), p. 30.

⁴¹ Kevin Cunningham in Avant (2005), p. 115.

Section Two: Typologies and Typological Problems

Typological issues played an important role in the early literature on security privatization.⁴²

From that discussion, Peter Singer's *tip-of-the-spear* typology stands out due to its widespread use in the PSC literature.⁴³ This section examines how Singer distinguishes between, what he calls, private military firms (PMFs) and mercenaries and between the different types of PMFs covered by his typology, before identifying the flaws of this approach.

The Three Ps: Permanent, For-Profit and Private

In his seminal work *Corporate Warriors*, Singer identifies three key characteristics that distinguish PMFs from mercenary units: First, PMFs are permanent entities, as opposed to the temporary alliances that characterise mercenary units.⁴⁴ This allows them to create more elaborate corporate structures and to rely on external finance and long-term client relations.⁴⁵ Secondly, while both are motivated by profit, their profit motives differ considerably. While PMFs are focused on 'business profit', which benefits companies as a whole, Singer regards mercenary units as mainly looking for short-term, individual profit.⁴⁶ Finally, as privately-owned corporations, PMFs differ from mercenary units in their organisational structure, i.e. they are more akin to contemporary companies, while the organizational blueprint of mercenary units resembles that of military units.⁴⁷

Singer's definition has a number of important implications. First, given that they are private, profit-making and permanent, a great variety of companies ranging from combat service providers (*EO* and *Sandline*), military advisors (*MPRI*) and companies offering logistical support (*KBR*) are portrayed as part of a coherent phenomenon.⁴⁸ Moreover, Singer ascribes behavioural implications to PMFs' shared structural characteristics. For instance, their permanence allegedly causes companies to pay greater attention to the legitimacy of their actions, as misconduct may discourage future business deals.⁴⁹ Mercenary units, which are believed to be solely interested in short-term individual profits, have no such compunction.

⁴² Schreier/Caparini (2005), p. 33ff.

⁴³ Petersohn (2008), p. 6, Gaston (2010), pp. 224-225.

⁴⁴ Singer (2003), p. 45.

⁴⁵ Singer (2001), p. 192.

⁴⁶ Singer (2003), p. 46.

⁴⁷ *Ibid.*, pp. 44-45.

⁴⁸ Singer (2001), p. 200.

⁴⁹ Singer (2003), p. 46.

However, by defining PMFs primarily by how they differ from mercenary units, Singer arguably misrepresents companies, which are ostensibly quite different from one another, as part of a single, coherent phenomenon with shared origins and behavioural characteristics.

Unfortunately, Singer's term PMF never caught on. Instead, a plethora of alternative terms is currently in use.⁵⁰ Yet, while value-laden designations like '[lap]dogs of war'⁵¹, '[modern-day] mercenaries'⁵² and 'new Condottieri'⁵³ still permeate the literature, defining PMCs and PSCs based on the three Ps of private, profit-making and permanent has become widely accepted. For many authors, the main appeal of Singer's definition presumably lies in its ability to combine the various different companies it encompasses in a coherent typology.

The *Tip-of-The-Spear* Typology

The *tip-of-the-spear* typology differentiates between the various companies included in Singer's definition by focusing on the locus of service provision in the battle-space: private companies providing combat services, such as *EO*, operate closest to the frontline, while support companies like *KBR* operate furthest away from it and private consultant companies, e.g. *MPRI*, fall between the two.⁵⁴

The most obvious weakness of the *tip-of-the-spear* typology is that, when *Corporate Warriors* was published in 2003, the market for combat services had already effectively ceased to exist: *EO* had gone out of business in 1999⁵⁵ and *Sandline* was weeks away from closing its doors.⁵⁶ Meanwhile, the conflicts in Afghanistan and Iraq brought different companies to the fore: *Aegis*, *CRG* and *Armorgroup* rejected the term PMC, which *EO* and *Sandline* had advocated for themselves.⁵⁷ These private security companies (PSCs) argued that, while their services require their employees to be armed, they provide only defensive, protective services as opposed to the offensive, military combat services offered by PMCs.⁵⁸

⁵⁰ Ortiz (2010), p. 46.

⁵¹ Van Bueren (2005), Chesterman (2008).

⁵² Taljaard (2005), Roberts/Kirkpatrick (2009), Bigo (2004), p. 5.

⁵³ Smith (2002), p. 104.

⁵⁴ Singer (2003), p. 91ff.

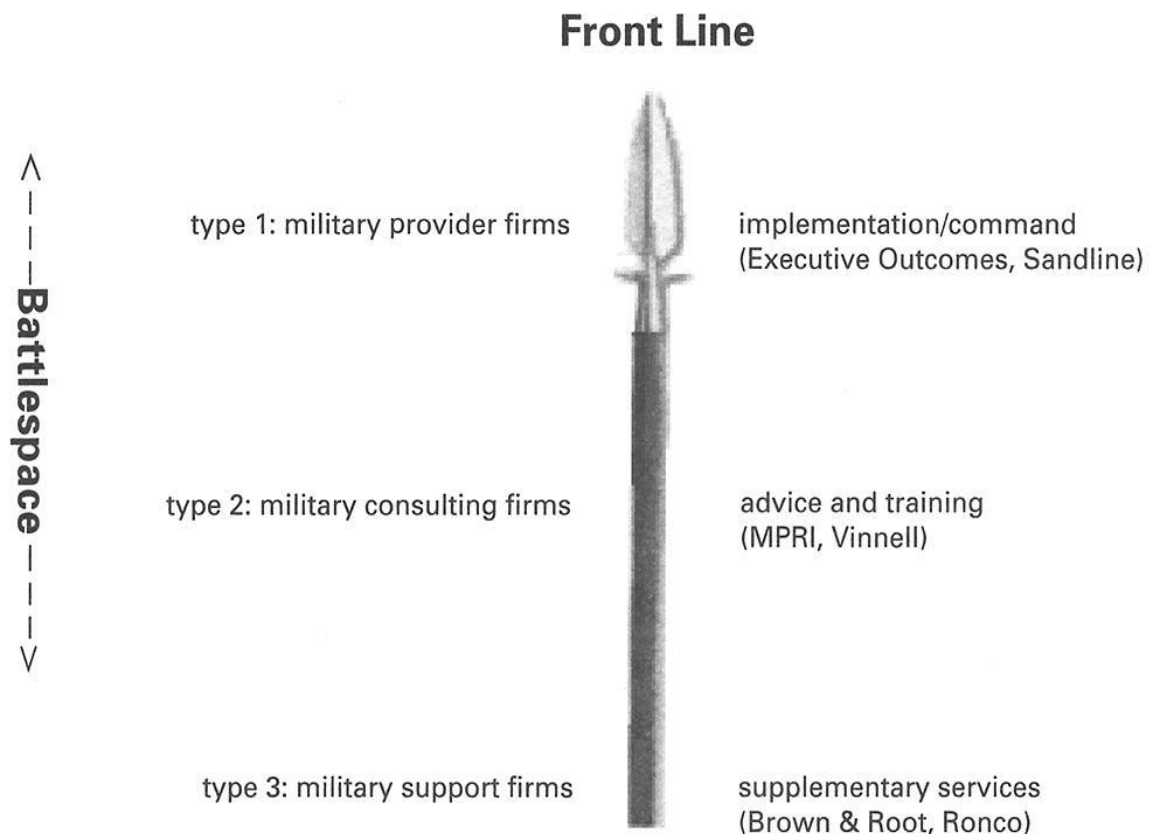
⁵⁵ Singer (2003), p. 101.

⁵⁶ Sandline ceased operations on 16 April 2004 (Grunberg (2004), p. 142).

⁵⁷ Spicer (1999 II), p. 165, Sandline (1998), p. 1.

⁵⁸ Erik Prince in IHT (2007), Peter Lawrence in Bergner (2005), O'Brien (2007), p. 38.

Figure II-1: Peter Singer's Tip-of-the-Spear Typology⁵⁹



Some authors simply incorporated PSCs as another distinct category into the *tip-of-the-spear* typology.⁶⁰ Others argued against distinguishing between PSCs and PMCs, claiming that differences between offensive and defensive uses of force are ‘necessarily subjective’,⁶¹ unsustainable at the operational level⁶² and that companies can change their service portfolio with relative ease.⁶³ Deborah Avant hence argues that researchers should focus on contracts as their unit of analysis because companies can offer a variety of services,⁶⁴ while others, notably Christopher Kinsey and Carlos Ortiz, proposed alternatives to the *tip-of-the-spear* typology. Kinsey’s four-quadrant-model stresses the importance of private sector demand by categorizing companies based on whether the object they secure is private or public and on the lethality of their service provision.⁶⁵ Ortiz defines PMCs as ‘legally

⁵⁹ Singer (2001), p. 200.

⁶⁰ Kümmel (2004), pp. 13-15.

⁶¹ Jennings (2006), pp. 14-15.

⁶² Faite (2008), p. 175, Jackson (2002), p. 34, Krahmann (2005 II), p. 6.

⁶³ Holmqvist (2005), p. 5, Schreier/Caparini (2005), p. 34, Petersohn (2008), p. 65.

⁶⁴ Avant (2005), pp. 16-17. See also Ortiz (2007), p. 55, Kinsey (2006), p. 8.

⁶⁵ *Ibid.*, p. 10.

established international firms offering services that involve the potential to exercise force in a systematic way and by military and paramilitary means' and proposes six categories to classify PMCs, namely combat, training, support, security, intelligence and reconstruction.⁶⁶ He also highlights the breadth of services provided by PSCs and places them in the context of other private military or security actors.

Addressing Typological Challenges

In contrast, this thesis distinguishes between PSCs and PMCs. Indeed, while the use of lethal force is an integral part of PSCs' service provision, they are – unlike PMCs – hired and remunerated only for the provision of defensive services. Accordingly, their training and standard operating procedures (SOPs) are focused on defensive services.⁶⁷ Suggestions that PSCs could easily change from providing defensive to offensive services ignore the fact that they lack the necessary equipment. PSCs' weaponry is generally restricted to side-arms (Glocks), small arms (AK47s and M4s) and light machine guns (Minimis, PKMs and SAWs).⁶⁸ In contrast, *Sandline's* contract with the government of Papua New Guinea suggests that PMCs are more heavily armed, including RPG-7s, mortars, automatic grenade launchers and Mi-24/Mi-17 helicopters.⁶⁹ Finally, there is no longer a market for the legitimate provision of offensive combat services and its re-emergence is considered to be unlikely.⁷⁰ Sarah Percy attributes the disappearance of PMCs offering combat services to a lack of legitimacy rather than to a lack of commercial viability.⁷¹ Today's PSCs would have to operate without the 'implicit or informal consent' governments extended to *Sandline* during the *Arms to Africa Affair*.⁷² Changes to the underlying economics also make a resurgence of a market for PMCs unlikely. First, the ease with which heavy weaponry, e.g. attack helicopters, can be procured has arguably decreased since the immediate aftermath of the end of the Cold War. Moreover, *EO's* strategic impact was predicated on its ability to field a coherent fighting force, which was made possible by the decommissioning of entire units at the end of

⁶⁶ Ortiz (2010), pp. 48-49.

⁶⁷ Higgins (2011), Phillips (2010), Beese (2010). DoD regulation explicitly prohibits PSCs to engage in offensive operations (CBO (2008), p. 19).

⁶⁸ Miller (2007), p. 166, Isenberg (2010 IX), Higgins (2011). DoD regulation restricts PSCs to weapons using a calibre of '7.62mm or smaller' (CBO (2008), p. 19).

⁶⁹ Singer (2003), Appendix 2.

⁷⁰ Exceptions include Michael Rathner in Armstrong (2008), p. 78, Münkler (2005), p. 135.

⁷¹ Percy (2007 II), p. 225ff.

⁷² Kinsey (2006), p. 72ff.

Apartheid.⁷³ Nowadays, it is no longer possible to purchase such a coherent fighting force “off the shelf”. Instead, PMCs would now have to compete for qualified labour with PSCs, which offer more secure, better compensated employment.⁷⁴ This is not to say that there may not exist an illegitimate market for private military services⁷⁵ or that individual contractors employed by PSCs may not cross the line towards using force in an offensive manner. However, such exceptional behaviour should not preclude an otherwise valid distinction being drawn between PSCs and PMCs.

In spite of Avant’s suggestion, this thesis also focuses on companies rather than contracts. Given this study’s aim of analysing the behaviour of PSCs, it seems prudent to discuss decision-making entities rather than the contracts PSCs serve. Moreover, focussing on contracts arguably exacerbates the aforementioned information bias, as far less information is available about private than about public sector contracts. Finally, contracts consist of various different services and identifying what services are contained in a contract is complicated, as they are frequently not itemized *en détail* or mislabelled.⁷⁶

Conclusion

The greatest challenge the *tip-of-the-spear* typology poses for the study of PSC behaviour is its broad approach, which it shares with the typologies proposed by Ortiz and Kinsey. As Chapter One has argued, such a broad approach mistakenly views distinctly different companies as part of a single, coherent phenomenon based on their supposedly shared structural and resulting behavioural characteristics. Such an approach necessarily overaccentuates the few aspects that different types of companies have in common – at the expense of characteristics that are specific to a subset of companies, yet more important for their behaviour.

The next section illustrates this point by discussing the UK PSI prior to 2003 and contrasting it with the prevalent US-centric view of security privatization. It shows how the UK PSI differs from its US equivalent and how these differences may lead to different behavioural outcomes.

⁷³ Singer (2003), p. 101ff.

⁷⁴ Sandline closed its doors because it could not compete with the wages PSCs paid in Iraq (Grunberg (2004)).

⁷⁵ See, for example, the 2004 Wonga Coup (Roberts (2006)).

⁷⁶ See Chapter 5 Section 3.

Section Three: The UK PSI Prior to 2003

The discussion above mainly focused on the US government's experience with security privatization before 2003. Despite numerous case studies detailing privatization in other countries,⁷⁷ this US-centrism is largely reflective of the PSC literature as a whole, which obscures important developments elsewhere. As Sabrina Schulz and Andy Bearpark note: 'There might be similar market evolutions worldwide, but the dynamics differ significantly in every country'.⁷⁸ This section, by looking at the UK PSI, argues that private sector demand is one such important, yet underappreciated dynamic.

The UK PSI and the End of the Cold War

The UK did not remain unaffected by the end of the Cold War. Indeed, budget constraints and the turn to private sector support arguably affected the UK armed forces even more strongly.⁷⁹ Since the 1990s, the UK military has seen an exceptionally high level of operational activity and, given its permanent membership in the UN Security Council, the *special relationship* and its colonial past, the need for Britain's vaunted ability to "punch above its weight" will likely remain high.⁸⁰ Likewise, ideological factors were even stronger in the UK, because the Tory governments of Margaret Thatcher and John Major and the New Labour governments of Tony Blair and Gordon Brown were ardent supporters of privatization.⁸¹ Hence, the end of the Cold War may have influenced UK PSCs differently from their US counterparts, but only in degree, not in substance.

In contrast, the UK PSI's early development and its continued influence present a more substantial divergence. While there are few links connecting early US companies like *Pinkertons* (founded in 1850) and *Kroll* (1972) to current US PSCs,⁸² greater continuity characterizes the UK PSI. David Stirling's founding of *Watchguard* in 1967 is generally considered to be the "birth" of the UK PSI⁸³ and two developments during this early phase continue to influence the evolution of the UK PSI. First, *Watchguard* liaised with the FCO, not the MoD⁸⁴ and this pattern, i.e. a (sometimes problematically) close relationship to the FCO

⁷⁷ See Fuchs (2007), p. 121ff, Gielink *et al* (2007), p. 149ff, Yanakiev/Nikolova (2007), p. 203ff, Uttley (2004).

⁷⁸ Bearpark/Schulz (2007), p. 240.

⁷⁹ Uttley (2005), p. 4, Krahmann (2011), p. 73.

⁸⁰ Dandeker/Freedman (2002), p. 468, Krahmann (2011), p. 85.

⁸¹ *Ibid.*, p. 84, Kinsey (2009), p. 101, Uttley (2004), pp. 13-14.

⁸² Boot (2007), Isenberg (2008 III). Several UK PSCs (Blue Hackle, Janusian) were founded by former Kroll employees (Spear's WMS (2008), (2008 III) and (2008 VIII)).

⁸³ Kinsey (2006), p. 46.

⁸⁴ BBC (1999).

and an arm's length relationship to the MoD, continues to prevail.⁸⁵ Secondly, except for the early days of *Watchguard*, the UK government never played such a dominant role as a customer of UK PSCs as the US government plays *vis-à-vis* companies like *Blackwater*, *DynCorp* and *Triple Canopy*. As Kinsey points out, '[b]y 1970, Stirling's original idea of placing Watchguard at the government's disposal had all but disappeared, overtaken by commercial interests'.⁸⁶ Early on, strong private sector demand therefore provided an attractive alternative to public sector demand for the UK PSI.

Beyond Watchguard: Early PSCs and the Contemporary UK PSI

This change in client structure in the UK PSI is best illustrated by the second generation of PSCs. Companies like *Control Risks Group* (CRG) and *Defence Systems Limited* (DSL) established two business models that shaped the UK PSI. CRG was founded in 1975 as a subsidiary of the insurance broker *Hogg-Robinson*. Faced with a growing threat of left-wing terrorism and a number of high-profile kidnappings,⁸⁷ the market for kidnap and ransom (K&R) insurances grew rapidly in the 1970s.⁸⁸ CRG offered policyholders risk advice, training and, should a kidnapping occur, support during ransom negotiations.⁸⁹ Over time, as their clients' security needs became more complex, especially after 9/11, CRG broadened its service portfolio to include business and political risk analysis, travel and executive security.⁹⁰ While CRG generally served private rather than public sector clients, its K&R business also brought it into close contact with the FCO.⁹¹ When physical risks became more important in the context of diplomatic security, the FCO and DFID turned to CRG for support.⁹²

The second business model is represented by DSL, which became *ArmorGroup* in 1996 and was later taken over by *G4S*.⁹³ DSL mainly provided British military training to friendly governments without direct UK government involvement.⁹⁴ While providing such training

⁸⁵ Kinsey (2009), p. 105ff, Reed (2010).

⁸⁶ Kinsey (2006), p. 48. See also Hoe (1996), p. 404, Bloch/Fitzgerald (1983), pp. 46-48, Marozzi (2008).

⁸⁷ Hodgson (1984), p. 89.

⁸⁸ Economist (2006). K&R policies through Lloyd of London: 1973 \$8mio, 1974 \$32 million, 1979 \$60 million (Hodgson (1984), p. 89).

⁸⁹ Gill (2006), p. 33-34, Hodgson (1984), p. 93ff.

⁹⁰ *Ibid.*, p. 94.

⁹¹ *Ibid.*, p. 95.

⁹² Westropp (2005), Clissitt (2010).

⁹³ Toyne-Sewell (2011).

⁹⁴ Singer (2003), p. 84.

was one of the reasons why Stirling had created *Watchguard*,⁹⁵ DSL was different insofar as it was primarily a business venture. As a result, DSL soon broadened its clientele to include companies like BP and international organizations like the UN.⁹⁶ It also complemented its portfolio of training services by providing security⁹⁷ and ordnance removal services.⁹⁸

While these business models are not mutually exclusive, they are distinct from the business model that dominates the US PSI. DSL and CRG diversified their businesses in favour of private sector demand, while the first US PSCs were predominantly private military training providers serving public sector contracts:⁹⁹ *MPRI* trained the Croatian Military during the Yugoslav War¹⁰⁰ and assisted the DoD in doctrinal development.¹⁰¹ *Northrop Grumman*, on behalf of the US government, provided training to the armed forces of various African countries¹⁰² and *Blackwater* provided training to US military and law enforcement personnel.¹⁰³ As a result, US PSCs tend to have a much stronger ‘long-term “brick and mortar”’ component,¹⁰⁴ tying them closely to the US government, which is both its regulator and its near-monopsonic customer.

Conclusion

During a 2007 congressional hearing, Congressman Chris Murphy retorted that his constituents ‘pay 90% of your salary, pay 90% of the salaries of your employees’ when Erik Prince refused to reveal *Blackwater*’s profit figures.¹⁰⁵ It is hard to imagine a UK MP taking a similarly arrogating stance. Instead, the UK government is very supportive of its PSI, as it is considered a growth industry that enables UK businesses to operate in otherwise inaccessible markets.¹⁰⁶ Thanks to their diversified business models, UK PSCs have a relationship with their government that is characterized by amicable cooperation, not the diktat of a near-monopsonic customer.

⁹⁵ BBC (1999), Cullen (2007), p. 240ff.

⁹⁶ Singer (2003), p. 221, Vines (2000), p. 184.

⁹⁷ Beese (2006).

⁹⁸ Vines (1997), p. 91.

⁹⁹ Cullen (2007), p. 241ff.

¹⁰⁰ Avant (2005), p. 101ff.

¹⁰¹ Isenberg (2009), pp. 101-102.

¹⁰² Theresa Whelan in Stanger (2009), p. 87.

¹⁰³ O’Harrow/Hedgpeth (2007).

¹⁰⁴ Cullen (2007), pp. 246-247.

¹⁰⁵ Chris Murphy in Democracy Now (2007).

¹⁰⁶ Economist (2006), Klein (2007), Willcocks (2008).

Since its ‘early start’ in the 1970s,¹⁰⁷ the UK PSI has earned a reputation of professionalism, which many UK PSCs rely on for attracting business.¹⁰⁸ UK PSCs also formed alliances, especially with the insurance industry, which deepened their integration into the wider economy. While the direct economic benefits of such alliances vary and are easily overstated,¹⁰⁹ PSCs will go to great length to protect them, as their dissolution entails significant reputational losses. As a result, many British PSCs had a sophisticated business model and an established clientele in place by 2003. The next section analyses the factors driving the hike in demand for PSC services in 2003-2004 and how this increase affected the trade in PSC services. Section six, in turn, returns to the importance of private sector demand in the UK PSI and explores how it affected UK PSCs during the “bubble”.

PART II: The Private Security Industry Since 2003

Section Four: The “Bubble”: The PSI 2003-2004

There is widespread agreement that the “bubble”, i.e. the rapid increase in demand for PSC services in Iraq in 2003-2004, heralded a new paradigm for the PSI – both for how PSCs organized their business¹¹⁰ and for how academics discussed the private provision of security services.¹¹¹ Nevertheless, the literature primarily identifies global factors, such as ideological and political changes associated with the end of the Cold War, as the root cause of the “bubble”¹¹² and little attention is paid to the effects of developments in Afghanistan and Iraq. This section argues that conditions and catalysts especially in Iraq in 2003-2004 played a decisive role in shaping the contemporary PSI.

Conditions

Prior to the “bubble”, the relationship between the PSI and its public sector clients was not a blank canvas. In the US, the legal authorization for the Worldwide Personal Protective Services (WPPS) contract, the primary vehicle for DoS purchases of PSC services, had been

¹⁰⁷ Economist (2006).

¹⁰⁸ Bearpark (2007).

¹⁰⁹ See Chapter 4 Section 4.

¹¹⁰ Donald (2006 II), p. 12. Government contracting changed the way in which PSCs conducted their business (Beese (2011)), while the security environment in Iraq forced PSCs to change how they operated (Worcester (2009)).

¹¹¹ Isenberg (2009), p. 58, Kinsey (2006), p. 4, Singer (2008), p. 258, Spearin (2003), p. 27, Ortiz (2010), p. 3.

¹¹² Bruneau (2011), p. 121ff.

created in 1986¹¹³ and had already been used in Haiti, the Balkans and in Afghanistan.¹¹⁴ In comparison, the FCO's and DFID's contracting procedures were relatively informal: PSCs were only used 'on a case-by-case basis' following ministerial consultation, despite diplomatic security not being a military function.¹¹⁵ The FCO enjoyed a close, informal relationship with a number of UK PSCs and used their services, for example, in Kosovo.¹¹⁶ Had these contractual vehicles/relations not been in place prior to the Iraq invasion, the subsequent increase in demand would have been inconceivable.¹¹⁷

Another pre-condition for the "bubble" was the poor planning for "Phase IV" operations in Iraq.¹¹⁸ Pre-war planning had been characterized by a poor understanding of the state of Iraq. The decline of the Iraqi economy in the inter-war years and the resulting social ferment were underestimated,¹¹⁹ as were the importance of the Iraqi military and of *Baath Party* members for maintaining security and keeping the civilian infrastructure operational.¹²⁰ Paul Bremer, head of the CPA, memorably complained: 'Nobody had given me a sense of how utterly broken this country was'.¹²¹ Planning for "Phase IV" operations was also guided by flawed assumptions about post-war developments, as policy-makers assumed a degree of malleability of the Iraqi culture, economy and political system that proved unrealistic.¹²² This was in part attributable to the undue influence of Iraqi exiles on the planning process¹²³ and to the rivalry between DoD and DoS, which separated regional expertise from the planning process.¹²⁴ The resulting plan underestimated the need for security, and its policies, i.e. *De-Baathification* and the disbanding of the Iraqi Army, aggravated an already challenging situation.

¹¹³ SIGIR (2009), p. 5.

¹¹⁴ Isenberg (2008 II), Elsea *et al* (2008), pp. 6-7, GAO (2003), p. 7.

¹¹⁵ Kinsey (2009), p. 110.

¹¹⁶ Bearpark (2007), Greenstock (2006).

¹¹⁷ Donald (2006 II), p. 8, Westropp (2005).

¹¹⁸ See SIGIR (2006). Phase IV describes reconstruction operations following the cessation of major combat operations (Crane (2005), p. 11).

¹¹⁹ Bensahel *et al* (2008), pp. 195-197.

¹²⁰ Ricks (2006), p. 158ff.

¹²¹ Bremer in Miller (2007), p. 37.

¹²² Ricks (2006), p. 210, GAO (2005), p. 14.

¹²³ Marcus (2003), Phillips (2005), p. 7, Kinsey (2009), p. 38.

¹²⁴ Dodge (2005), pp. 29-30.

Poor planning for “Phase IV” operations culminated in insufficient resource commitments. Against the US military’s advice,¹²⁵ only about 116,000 troops were used in the invasion¹²⁶ and their swift success in ousting President Saddam Hussein was seen as validating the DoD’s stance.¹²⁷ Hence, the civilian leadership found it ‘hard to conceive that it would take more forces to provide stability in post-Saddam Iraq than [...] to conduct the war itself’.¹²⁸ So, when Iraq became increasingly insecure after April 2003, the civilian leadership had planned for a drawdown of troops – preparations for which continued until October 2003 – that would have left only 40,000 troops in the country.¹²⁹ Moreover, the available troops were equipped for combat, not policing¹³⁰ and preoccupied with the search for WMDs.¹³¹ Thus, insufficient troops were available for maintaining public order in post-invasion Iraq.

What was abundantly available, though, was money.¹³² Pre-war planning assumed that Iraqi oil production would pay for the reconstruction costs¹³³ and, when the lack of security and the dilapidated infrastructure kept oil revenues low, the US government stepped in, pledging \$24 billion in reconstruction funds.¹³⁴ Funds from the *Oil-for-Food Program* (\$18.1 billion), asset seizures (\$2.7 billion), and international donors (\$13.6 billion) brought the available funds to a staggering \$58.4 billion by 30 April 2004.¹³⁵ That ‘[c]ontractors [were] doing the actual work of reconstruction and rehabilitation in Iraq’ was therefore largely attributable to a lack of public sector personnel resources and an abundant availability of money.¹³⁶

Catalysts

The first catalyst that caused the “bubble” to inflate were looting incidents in Baghdad in April 2003. In addition to causing considerable damage to Iraq’s civilian infrastructure,¹³⁷ looting affected Iraqis’ perceptions of the US military and the reconstruction effort.¹³⁸ While the civilian leadership initially dismissed looting as inconsequential – Secretary of Defense

¹²⁵ While General Shinseki estimated that ‘several hundred thousand soldiers’ were needed to occupy Iraq (Dodge (2005), p. 10), Paul Wolfowitz called these figures ‘outlandish’ (Ricks (2006), p. 97).

¹²⁶ Dodge (2005), p. 10.

¹²⁷ Bensahel *et al* (2008), pp. 234-237.

¹²⁸ Wolfowitz in Ricks (2006), pp. 97-98.

¹²⁹ Ricks (2006), p. 97.

¹³⁰ Bensahel *et al* (2008), p. 84.

¹³¹ Ricks (2006), pp. 145-146.

¹³² Donald (2006 II), p. 12.

¹³³ Phillips (2005), p. 123.

¹³⁴ GAO (2004), p. 11.

¹³⁵ *Ibid.*, Bensahel *et al* (2008), pp. 221-222.

¹³⁶ *Ibid.*, p.220.

¹³⁷ *Ibid.*, p. 236, Erinys (2005), p. 1.

¹³⁸ Dodge (2005), pp. 9-10.

Donald Rumsfeld exclaimed '[s]tuff happens' when asked about it¹³⁹ – the fact that it was allowed to go on for weeks, with US troops apparently unwilling to engage in crowd-control,¹⁴⁰ alienated many Iraqis¹⁴¹ and, according to Paul Bremer, 'established an atmosphere of lawlessness'.¹⁴² Moreover, looting allowed the budding insurgency to plunder Iraqi army weapon dumps, which Coalition Forces (CF) had largely left intact and unprotected.¹⁴³

A change in the insurgents' strategy represented a second catalyst: Initially, the insurgency had focused on US military supply-lines.¹⁴⁴ As the military consolidated its bases and improved convoy security, insurgents shifted their attacks to "soft", i.e. non-military, targets, such as the Jordanian embassy and the ICRC and UK compounds in Baghdad.¹⁴⁵ For the first time, according to Samantha Power, humanitarians became 'outright targets of Al Qaeda and other violent extremists' in Iraq,¹⁴⁶ causing companies and NGOs to suspend their operations and withdraw their staff – often at their governments' insistence.¹⁴⁷

A third important catalyst consisted of the haphazard institutional development that accompanied the reconstruction effort. The Office of Reconstruction and Humanitarian Assistance (ORHA) was created only two months prior to the invasion, a full year after planning for the conflict had started,¹⁴⁸ and its impact was stymied by DoD/DoS rivalries.¹⁴⁹ Worse, after only three months of operations,¹⁵⁰ the ORHA was replaced by the Coalition Provisional Authority (CPA) under Paul Bremer on 11 May 2003.¹⁵¹ Like ORHA,¹⁵² the CPA started from scratch, making little use of the experiences of the ORHA or the DoS.¹⁵³ This lack of institutional continuity was aggravated by the replacement of experienced military

¹³⁹ Donald Rumsfeld in Ricks (2006), p. 136.

¹⁴⁰ Phillips (2005), pp. 133-134, SIGIR (2007), p. 23.

¹⁴¹ Bensahel *et al* (2008), p. 84ff.

¹⁴² Bremer in Wright/Ricks (2004).

¹⁴³ Dodge (2005), pp. 9-10. The military lacked man-power to guard these weapon caches (Ricks (2006), p. 145) and could not destroy them for fear of releasing NBC agents (*Ibid.*, p. 192).

¹⁴⁴ Ricks (2006), pp. 217-221.

¹⁴⁵ Phillips (2005), p. 202, Dodge (2005), pp. 11-12.

¹⁴⁶ Power (2008). For examples, see Filkins/Alvarez (2004), Dao (2004).

¹⁴⁷ Miller (2007), p. 45. France, Germany and Russia urged their citizens to leave Iraq (Phillips (2005), p. 202).

¹⁴⁸ Bensahel *et al* (2008), p. 239.

¹⁴⁹ Phillips (2005), pp. 127-129.

¹⁵⁰ *Ibid.*

¹⁵¹ Jay Garner, the head of ORHA, stayed on for two weeks after handing over to Bremer, but the two 'didn't get along' (Garner in Ricks (2006), p. 158).

¹⁵² Phillips (2005), p. 126.

¹⁵³ Miller (2007), p. 37.

units, which coincided with the ORHA/CPA handover.¹⁵⁴ Finally, the CPA was plagued by, what James Dobbins has called, ‘heroic amateurism’, i.e. staff that was ‘dedicated’, but not sufficiently qualified for the tasks at hand.¹⁵⁵

This generated a vicious circle: The insurgency increasingly targeted non-military actors crucial to the reconstruction effort, which provoked the departure of a growing number of IOs, NGOs and companies from Iraq. This, in turn, slowed the reconstruction effort, and the resulting lack of basic services further undermined the occupation and fuelled the insurgency. Given the lack of troops and the availability of money and of tried and tested contracting vehicles/relationships, finding a private sector solution to this rapidly deteriorating situation was an almost inevitable conclusion.

Conclusion

The explosive growth in demand for PSC services was thus, to a large part, a product of developments specific to Iraq in 2003-2004: A lack of adequate troops, a weak institutional framework, a well-armed and sophisticated insurgency and a largely private sector-based reconstruction effort. Any attempt to explain the expansion of PSC use in Iraq as the result of a deliberate ideological shift disregards the poor planning that permeated the reconstruction effort and, in the words of SecDef Robert Gates, the ‘willy-nilly’, i.e. *ad hoc* and uncontrolled, way in which security was privatized.¹⁵⁶

The section also supports this thesis’ choice of a narrow approach: While the PSIs in Iraq and Afghanistan are closely linked, e.g. manpower or equipment shortages affect both markets, there is no similarly immediate connection to the use of PSCs in Kosovo in 1998, let alone to *EO’s* and *Sandline’s* activities in Angola and Sierra Leone.

¹⁵⁴ Ricks (2006), pp. 155-157.

¹⁵⁵ Dobbins (2006). See also SIGIR (2006), p. 24.

¹⁵⁶ Gates in Newell (2009). See also Bruneau (2011), p. 122.

Section Five: Data on the PSI's Size and Growth and its Limitations

As the security situation in Iraq worsened in 2003/2004, demand for private security increased dramatically.¹⁵⁷ This raises two important questions: How large was this increase in demand in 2003-2004, and by how much did the market contract in the following years? Unfortunately, a lack of reliable data complicates answering these questions definitively – a problem that the literature often obscures.

Table II-1: Military and Contractor Personnel during US Military Operations¹⁵⁸

War/Conflict	Civilians	Military	Ratio
Revolution	1,500	9,000	1:6
Mexican/American	6,000	33,000	1:6
Civil War	200,000	1,000,000	1:5
World War I	85,000	2,000,000	1:20
World War II	734,000	5,400,000	1:7
Korean Conflict	156,000	393,000	1:2.5

First, the literature often does not distinguish between PSCs and other types of private service providers, which inflates the number of armed security contractors.¹⁵⁹ Also, contractor numbers are often presented in relation to the number of soldiers used in a given conflict (see table II-1). However, contractor figures prior to the advent of the contemporary corporation and concerning local contractors are likely unreliable.¹⁶⁰ Even under the best of circumstances, such ratios compare apples and oranges, as Phase IV operations, during which civilian-led reconstruction plays a significant role, were not an issue during previous conflicts, such as the Mexican-American War.

Iraq

However, even when limited to PSCs, several problems affect current data analysis. First, until the second half of 2007, the US government did not systematically collect data on its use of PSCs (see table II-2).¹⁶¹ These data gaps are often obscured by citing figures from press reports or industry lobby groups, whose reliability is often questionable.¹⁶² For

¹⁵⁷ SIGIR (2006 II), p. 105.

¹⁵⁸ Avant (2006), p. 328. See also Bruneau (2011), p. 115.

¹⁵⁹ Cancian (2008), p. 62.

¹⁶⁰ Avant (2006), FN 2.

¹⁶¹ SIGIR (2008), p. 7, Motsek (2009), p. 11, Schwartz (2011), p. 4ff.

¹⁶² Cotton *et al* (2010), p. 12, Elsea *et al* (2008), p. 3, CBO (2008), p. 15.

example, a recent *RAND* study cited 10,000 and 20,000 PSC contractors for Iraq in 2003 and 2004, which is probably too low an estimate, given that Erinys' *Oil Protection Force* alone employed 9,000 and 16,000 contractors, respectively.¹⁶³ Secondly, while efforts to systematically collect data and disclosure requirements like the *Freedom of Information Act* have generated reliable data on the US and UK governments' use of PSCs,¹⁶⁴ there is little information available on the use of PSCs by other countries or by the private sector.¹⁶⁵ Hence, conclusive evidence that 'the largest clients in the security market in Iraq are the U.S. Departments of Defense and State, and USAID' has yet to be presented.¹⁶⁶

Table II-2: RAND Data on the Number of PSC Contractors in Iraq

Year	2003	2004	2007	2009
Number of Armed Contractors in Iraq	10,000	20,000	30,000	10,422

Afghanistan

Concerns about data gaps, biases and reliability are even more pronounced in Afghanistan, where the use of PSCs has, to date, been subject to relatively little academic, media and policy interest.¹⁶⁷ The Special Inspector General for Afghanistan (SIGAR) was only instituted in 2005, five years after its counterpart in Iraq.¹⁶⁸ Iraq has also been more than twice as costly in treasure¹⁶⁹ and blood¹⁷⁰ and total contractor spending by US agencies between 2003-2007 in Iraq (\$85 billion) dwarfed that in Afghanistan (\$10 billion).¹⁷¹ Until December 2009, the number of PSC contractors employed by the DoD in Iraq exceeded its number in Afghanistan (see Figure II-2).¹⁷² The resulting focus on the PSI in Iraq,¹⁷³ however, ignores the increasing importance of the PSI in Afghanistan: Indeed, in 2011, the DoD employed more PSC contractors in Afghanistan (21,544) than in Iraq (9,554).¹⁷⁴

¹⁶³ Erinys (2005), p. 4+24.

¹⁶⁴ Cancian (2008), p. 62, Schwartz (2011), p. 4ff, FCO (2007+2009 V).

¹⁶⁵ CWC (2009), p. 63, SIGIR (2009 II), p. 27. DoD reporting includes PSC use by prime contractors, but exclude demand by subcontractors and genuine private sector demand (USD/A&L (2008), p. 2, CBO (2008), p. 8).

¹⁶⁶ Cotton *et al* (2010), pp. 12-13. For similar claims about Afghanistan, see Sherman/DiDomenico (2009).

¹⁶⁷ Lynch (2010), Rabeler (2010), p. 24.

¹⁶⁸ Bruneau (2011), p. 2.

¹⁶⁹ Afghanistan \$297 billion, Iraq \$715 billion (Daggett (2010), p. 2).

¹⁷⁰ Afghanistan 1,816, Iraq 4,408 (DoD (2011), DoD (2011 II). UK: Afghanistan 384, Iraq 179 (BBC (2011)).

¹⁷¹ CBO (2008), p. 2.

¹⁷² Schwartz (2011), pp. 6-7. See Appendix I+II.

¹⁷³ Cotton *et al* (2010), Berndtsson (2009), Kinsey (2009).

¹⁷⁴ USD/AD&L (2011 IV), p. 2.

Figure II-2: Comparison Afghanistan and Iraq: DoD Use of PSC Contractors 2007-2009¹⁷⁵

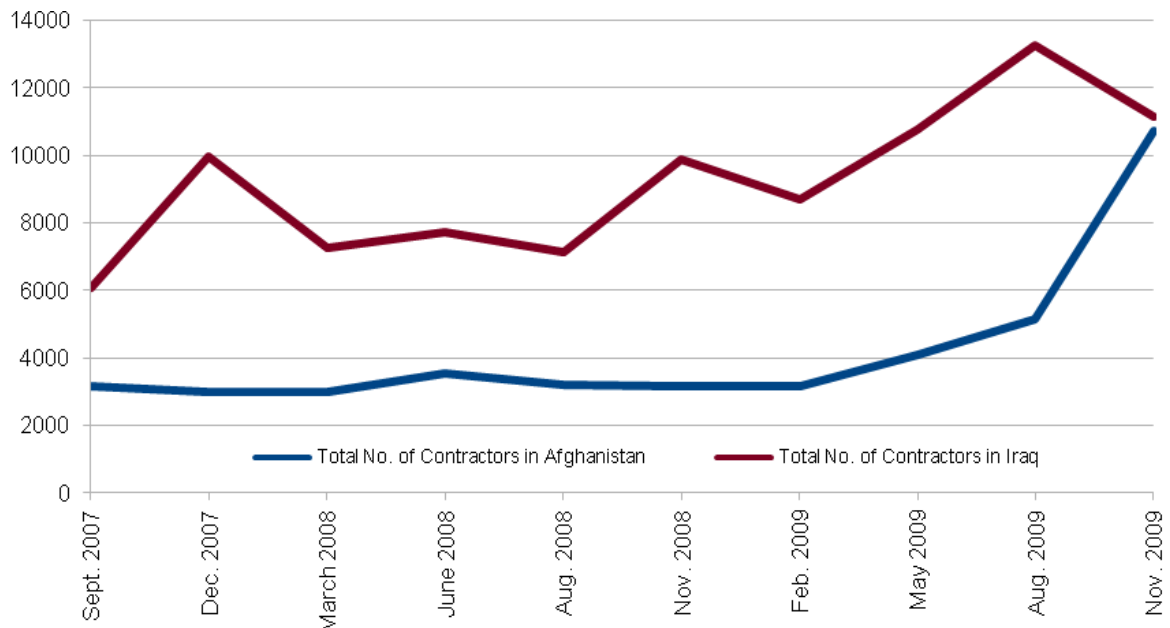
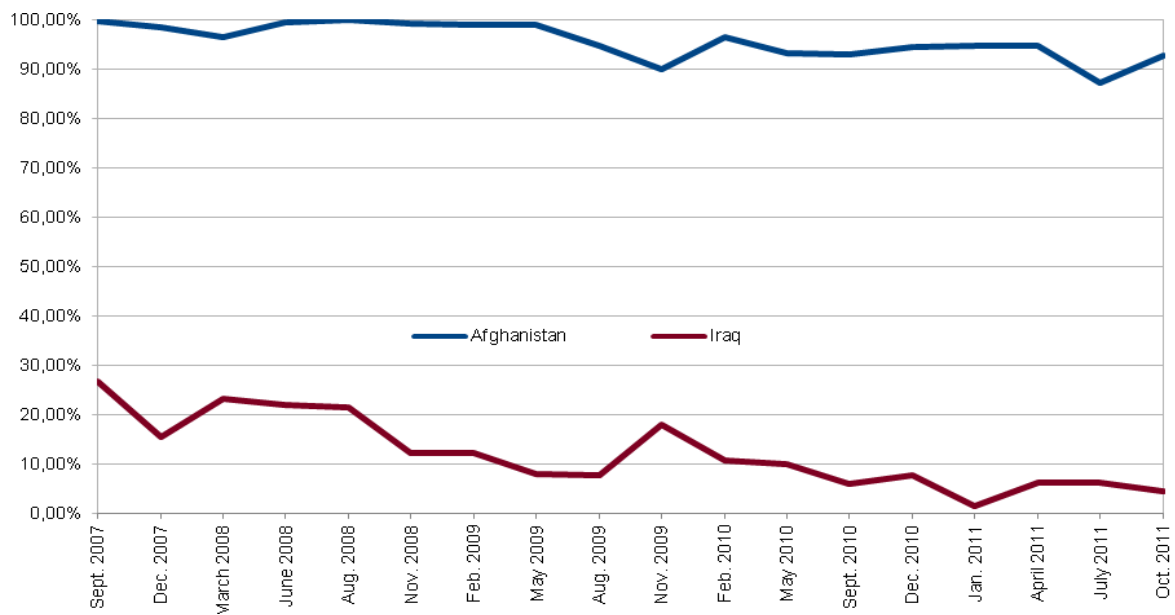


Figure II-3: Percentage of Local Contractors of Total No. of Contractors in Afghanistan and Iraq, 2007-2011¹⁷⁶



Moreover, Afghanistan deviates from Iraq in ways that may prove more instructive for the future trade in PSC services. For instance, local security providers, which are far less accessible for researchers than their US/UK counterparts,¹⁷⁷ play a far greater role in

¹⁷⁵ Own elaboration based on USD/AD&L (2008-2010).

¹⁷⁶ *Ibid.*

¹⁷⁷ Rabeler (2010), p. 3.

Afghanistan than in Iraq (see Figure II-3). A more independent Iraqi government, emboldened by the withdrawal of Coalition Forces, may pursue restrictive policies towards foreign PSCs similar to those of the Afghan government.¹⁷⁸ Iraq is also a far more developed country (see table II-3) that can draw on considerable natural resources to fuel its future growth. Afghanistan, in turn, ranks 172nd out of 187 countries in the *Human Development Index* (HDI) and may thus be more representative of the challenging environments where future interventions may take place.¹⁷⁹

Table II-3: Select Data from the 2011 HDI on Iraq and Afghanistan¹⁸⁰

Iraq	Measure of Development	Afghanistan
\$2210	GNI per capita	\$370
68	Life expectancy	44 years
85/80	Youth Literacy (m/f)	49/18
35/1000	Infant mortality	134/1000
66%	Urbanization	22%

What Is Known

Given these data limitations, reliable information about the use of PSCs in Iraq and Afghanistan from 2003-2009 is far from plentiful. From 2003-2007, the Congressional Budget Office (CBO) estimates that US government agencies spent between \$6-10 billion on PSC services in Iraq – out of \$85 billion of total spending on contractors and \$446 billion of total US appropriations.¹⁸¹ A 2008 Special Inspector General for Iraq (SIGIR) report refines these figures by suggesting that US government agencies and their contractors had spend \$5.9 billion since 2003,¹⁸² but acknowledges that actual spending on security could be significantly higher, as data on subcontractors is limited.¹⁸³

SIGIR further provides detailed information on the companies that worked for DoD, DoS and USAID and what share of the \$5.9 billion they received.¹⁸⁴ With respect to the number of

¹⁷⁸ *Presidential Directive* 62 outlaws foreign PSCs by 2014 (Isenberg (2010 X)).

¹⁷⁹ UNDP (2011). Iraq ranks 132nd out of 187.

¹⁸⁰ *Ibid.*

¹⁸¹ CBO (2008), p. 2.

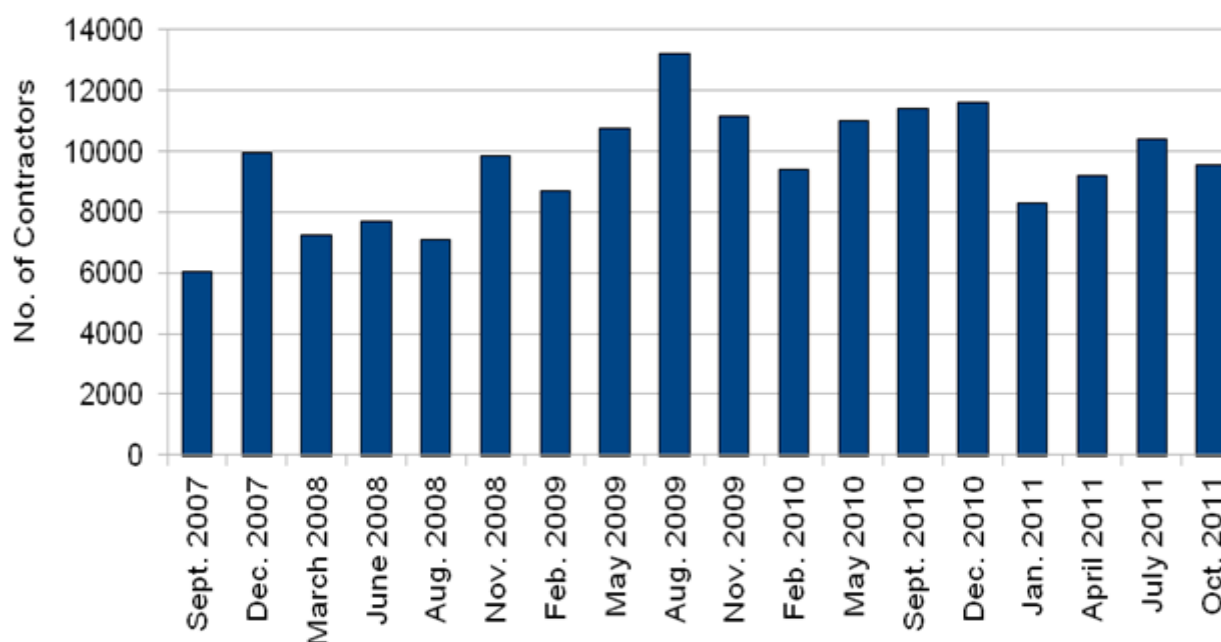
¹⁸² SIGIR (2008), p. 1.

¹⁸³ SIGIR (2009 III), p. 3.

¹⁸⁴ *Ibid.*, p. 24.

contractors, the CBO does not provide its own estimations, but relies on GAO figures for 2005 (25,000 PSC contractors) and PSCAI figures for 2008 (30,000 PSC contractors).¹⁸⁵ It further states that ‘counts of contractor personnel in Iraq [...] are only rough approximations’,¹⁸⁶ suggesting that figures for 2003-2007 are less than reliable. The CBO blames this lack of data on the use of outcome-oriented contracting procedures, which do not require contractors to specify the number of employees used on a given contract.¹⁸⁷ Hence, concerns about the reliability of these figures, especially with respect to data for 2003-2007, seem merited. From the second half of 2007 onwards, data on the DoD’s PSC use improve significantly (Figure II-4 and II-5).¹⁸⁸

Figure II-4: DoD Use of PSC Contractors in Iraq, 2007-2011



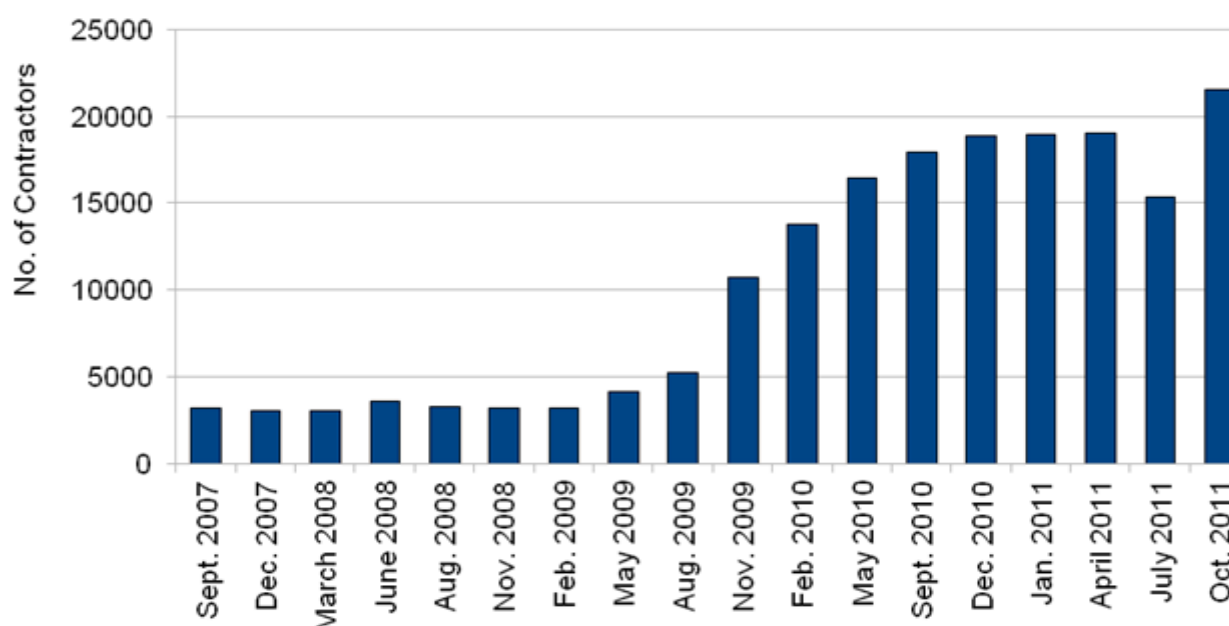
¹⁸⁵ CBO (2008), pp. 14-15.

¹⁸⁶ CBO (2008), pp. 8-10.

¹⁸⁷ CBO (2009), p. 10.

¹⁸⁸ There are numerous inconsistencies in the DoD/DoS/USAID data (SIGIR (2008), p. ii, GAO (2010 II), p. 8ff).

Figure II-5: DoD Use of PSC Contractors in Afghanistan, 2007-2011



DoS' use of PSC services accounted for an additional 3,321 contractors in 2009 in Iraq,¹⁸⁹ rising to 4,250 in 2010¹⁹⁰ and was expected to rise to 5,500 by the end of 2011.¹⁹¹ Furthermore, the DoS reported 2,205 PSCs contractors in Afghanistan for 2009,¹⁹² which dipped to 1,691 in the first half of 2010.¹⁹³ USAID reported that it used 3,888 PSC contractors in 2009 and 4,538 PSC contractors in the first half of 2010 in Afghanistan.¹⁹⁴

Given these insights, the claim that US government agencies are the largest customers in the market for PSC services in Iraq and Afghanistan may well be correct. Still, their aggregate demand may fall short of the total demand for PSC services, given that private sector demand is more fragmented. Moreover, \$1.2 billion of the aforementioned \$5.9 billion is paid to subcontractors,¹⁹⁵ whose indirect relationship to US agencies may differ distinctly from the direct control they exert on their prime contractors.

¹⁸⁹ CWC (2009), p. 62. In 2006, the DoS employed 3,000 PSC contractors (Cotton *et al* (2010), p. 14).

¹⁹⁰ GAO (2010 II), p. 21.

¹⁹¹ Schwartz (2008), p. 12.

¹⁹² GAO (2010 II), p. 21.

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

¹⁹⁵ SIGIR (2008), p. 6.

Conclusion

Given the problems associated with the available data, it remains difficult to determine the exact size and growth of the PSI since 2003. The lack of reliable data is particularly acute for the duration of the "bubble" - the period that has arguably had the strongest influence on popular perceptions of PSCs. While the data provide only an incomplete picture of the PSI in Iraq and Afghanistan, it still allows for a number of tentative conclusions to be drawn. First, while PSC representatives frequently emphasise that only a relatively small share of the total number of contractors is armed – Dominick Donald suggests 10%¹⁹⁶ – the available figures suggest that PSC use is a significant and policy-relevant phenomenon in both Iraq and Afghanistan. Secondly, the available data does not conclusively prove a significant dip in the demand for PSC services in the post-“bubble” period. Instead, DoD use of PSC services increased since 2007 – slightly in Iraq and dramatically in Afghanistan.¹⁹⁷ Thirdly, flawed as it may be, the data about US government contracting in Iraq, especially since 2007, constitute a significant improvement over those available at any other time.¹⁹⁸ Finally, incomplete data sets arguably pose less of a problem for the purpose of this thesis: To gain a more complete understanding of PSC behaviour, perfect information about the overall size and growth of the PSI is ‘nice to have’ but not necessary. It is instead more important to understand what data PSCs themselves have at their disposal when making business decisions and how they interpret it. Indeed, using data derived from interviews and corporate reporting, the following section will discuss how PSCs perceived the PSI's developments in Iraq and Afghanistan in 2003-2009.

¹⁹⁶ Donald (2006 II), p. xi.

¹⁹⁷ See Appendix I+II.

¹⁹⁸ Bruneau (2011), p. 111.

Section Six: The “Bubble” and its Aftermath from an Industry Perspective

If the “bubble” burst in 2005,¹⁹⁹ why do the available data suggest that DoD use of PSC services increased since 2007 in Iraq and Afghanistan?²⁰⁰ While poor data are partly to blame for this apparent discrepancy, this section argues that the volatility in the market for PSC services, which the “bubble” and its bursting describes, has its roots not in a significant overall decrease in demand, but in changes of perceptions of PSC services and in the institutional framework orchestrating the Iraqi reconstruction.

‘Iraq was no Ordinary Market’²⁰¹

The “bubble” and its bursting are rarely characterized as supply-side problems. Yet, interviews repeatedly indicate that the PSI was a ‘cottage industry’ prior to 2003.²⁰² As such, the small number of mid-sized companies that populated the industry conducted their recruitment through networks of personal relationships, based on shared years in the British military.²⁰³ They also catered to a relatively small market and customer relations were characterized by a strong personal dimension – again often based on shared military experience.²⁰⁴ Vetting and accountability took place informally, was largely intransparent to outside observers and varied depending on the company and client.²⁰⁵ When the demand for PSC services increased in 2003, these market structures proved woefully inadequate, resulting in a temporary shortage in the supply of PSC services.

This triggered a number of changes with long-term implications for the PSI. First, the resulting scarcity of qualified labour provoked a steep increase in wages, led to poaching among PSCs²⁰⁶ and, eventually, a change in their recruitment practices, as databases and commercial recruitment support replaced the proverbial rolodex of former army-buddies.²⁰⁷

¹⁹⁹ Donald (2006 II), Beese (2006), Worcester (2005).

²⁰⁰ See Appendix I+II.

²⁰¹ Miller (2007), p. 166.

²⁰² Shepherd (2008), p. 9.

²⁰³ Krott in COR (2009 XII), Ashcroft (2006), p. 5ff.

²⁰⁴ Priestley (2009), Hiscox (2008), Hession (2007).

²⁰⁵ Toyne-Sewell (2011).

²⁰⁶ Miller (2007), p. 178.

²⁰⁷ Claridge (2010), Donald (2006).

PSCs also looked further afield to address their recruitment needs, resulting in the large-scale use of so-called third-country nationals (TCN) (see figure II-6 and II-7).²⁰⁸

Figure II-6: Composition of DoD PSC Contractors in Afghanistan, 2007-2011

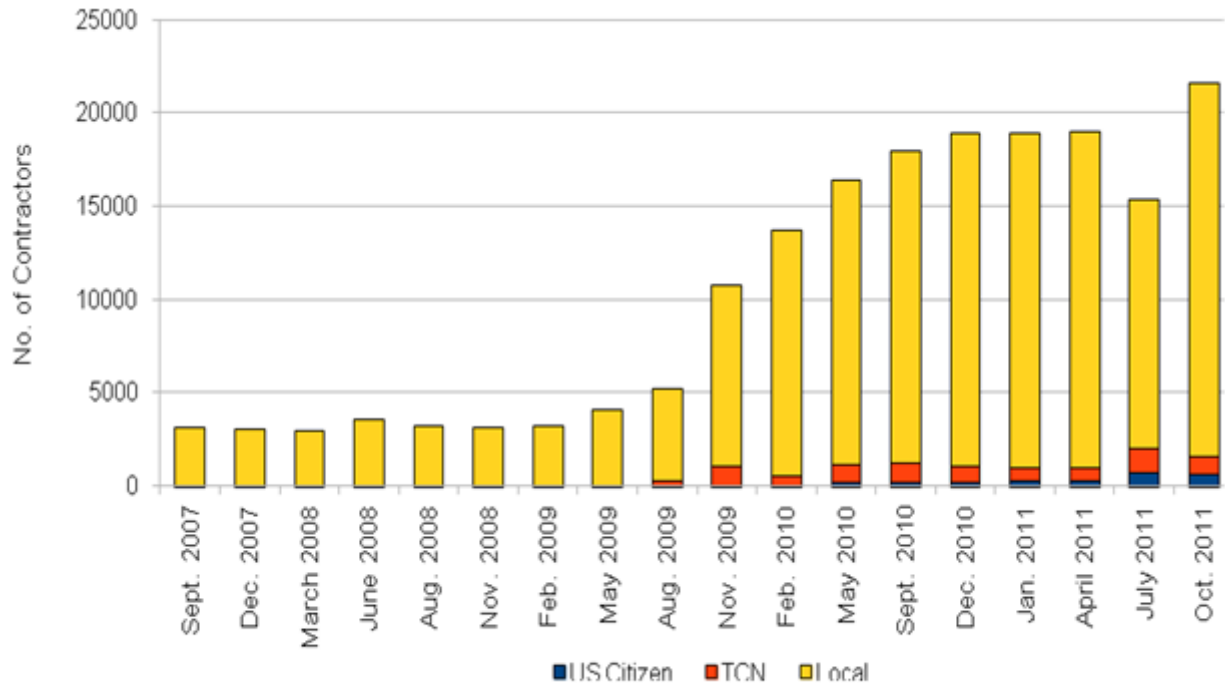
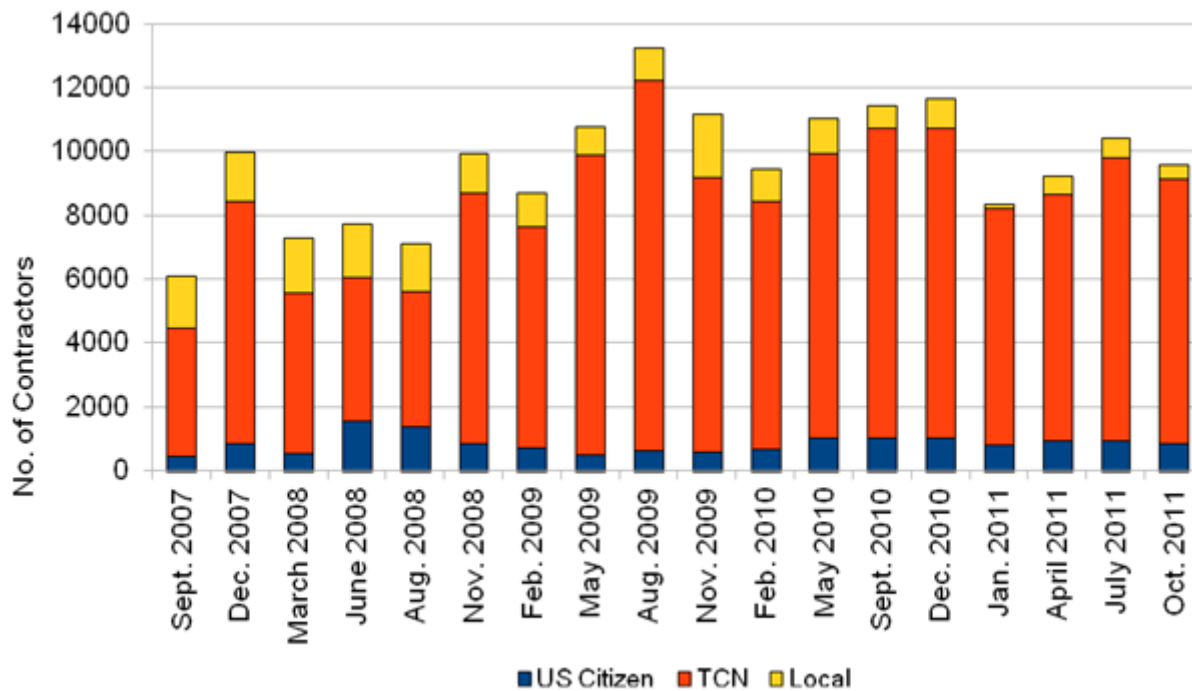


Figure II-7: Composition of DoD PSC Contractors in Iraq, 2007-2011



²⁰⁸ See Appendix I+II.

In the short-term, this internationalization of the PSI's workforce reduced wages in Iraq,²⁰⁹ but, in the long-term, it also raised questions about the importance of quality in the PSI, i.e. was it ever necessary to pay the premium an established PSC would demand?

Secondly, the "bubble" changed the nature and modalities of competition between PSCs. During the rapidly deteriorating security situation of 2003/2004, a company's experience, capabilities and pricing were arguably secondary to how fast it could put "boots on the ground".²¹⁰ As a result, contracts of unprecedented size were won by companies that had scarcely existed before 2003.²¹¹ This flood of new entrants had two long-term consequences: On the one hand, many new entrants had yet to develop managerial processes, including vetting, oversight and accountability, whilst already operating in a hostile environment.²¹² This aura of ineptitude still colours public perceptions of the PSI. On the other hand, these entrants' success raised further questions about the importance of quality in the PSI. If a new company can use databases to fulfil a large-scale contract faster and cheaper, what is the value-added that justifies the premium charged by an established and, thus, more experienced PSC?

Thirdly, many of the NGOs and private companies working in Iraq had little previous experience with operating in high-risk environments.²¹³ Hence, they were often unable to determine whether security services were valued fairly in terms of quality and price.²¹⁴ During the "bubble", having some form of security clearly outweighed concerns about cost-efficiency, service quality and best practices in contracting. This raised another long-term question about the PSI: How can an established company, which employs highly-qualified contractors, compete against new entrants, if clients fail to recognize and indeed appreciate differences in service quality?

In short, the "bubble" did not only alter the volume of trade in PSC services, it also changed the industry's image. These changes became evident in the aftermath of the "bubble", when clients' valuations of PSC services deteriorated significantly – along with their willingness to

²⁰⁹ SIGIR (2006 II), p. 5.

²¹⁰ Custer Battles won the Baghdad Airport contract, because it promised to be operational within weeks rather than months (Chandrasekaran (2006), p. 154).

²¹¹ Examples include Aegis (Baer (2007)), Custer Battles (Miller (2005)) and Triple Canopy (Bergner (2005)).

²¹² Beese (2011).

²¹³ Donald (2006 II), p. 15.

²¹⁴ GAO (2005), pp. 3-4.

pay for them. Ultimately, their clients' unwillingness to recognize and pay for differences in service quality motivates PSC to switch to producing cheaper, low-quality services.

'Government's Attitude to PSCs Changed Completely'²¹⁵

Changes in the institutional framework in Iraq also had important implications for PSCs and the market they operated in. While Paul Bremer, as head of the CPA, reported to the Secretary of Defense, the CPA's contracting guidelines covered only 31 pages, while comparable US government rules could easily cover 1,923 pages.²¹⁶ Such truncated regulations allowed the CPA to make funds available quickly to companies and NGOs in need for security, but they also invited oversight and accountability deficits and allegations of waste and fraud.²¹⁷ Moreover, interviews suggest that these lax contracting standards created a tolerance towards high prices among PSC clients: 'In 2003 and 2004 money was basically free [in Iraq]'.²¹⁸ Clients did not even demur when security accounted for as much as 22% of the costs of some reconstruction projects,²¹⁹ because ultimately the CPA would "pick up the tab". Prices for PSC services in Iraq were high not because clients valued their services, but because of limited cost-controls.

Yet, while '[n]ormal commercial or governmental financial constraints no longer applied' in Iraq in 2003-2004,²²⁰ interviews suggest that this was merely a temporary phenomenon.²²¹ Within twelve months of the CPA's handover of power to the Iraqi government, many of the contracts negotiated under its lenient contracting regime either expired or were renegotiated,²²² which explains why the market for PSC services slowed in 2005. A significant share of the CPA's funds was subsequently transferred to the Iraqi government,²²³ which preferred investing in public or local private security providers. Also, oversight over the Coalition's reconstruction effort was brought more firmly under the US government's purview.²²⁴ Nevertheless, various reports suggest that US government contracting in Iraq

²¹⁵ Beese (2011).

²¹⁶ Miller (2007), p. 188. See also Eckholm (2006), Merle (2006).

²¹⁷ *Ibid.*, p. 112, Erinys (2005), pp. 1-2, SIGIR (2006 II), p. 45.

²¹⁸ Bearpark in Lane (2010).

²¹⁹ Miller (2007), p. 163. Figures for security costs in Iraq vary from 7.6-25% of total costs (SIGIR (2007), p. 105). A similar share of costs has been estimated for Afghanistan (Sherman/DiDomenico (2009), p. 2).

²²⁰ Donald (2006 II), p. 15.

²²¹ Kroha (2009), Claridge (2010), Isaacs (2010).

²²² Erinys (2005), p. 37ff.

²²³ SIGIR (2011), p. 1ff.

²²⁴ GAO (2005 II), pp. 4-5.

was initially not a significant improvement.²²⁵ For instance, while the WPPs had been in place prior to the invasion, it still lacked reliable accountability and oversight procedures and the staff necessary to enforce them.²²⁶ This criticism illustrates the more rigorous scrutiny PSC contracting has been exposed to ever since. Eventually, it led the DoD and DoS to implement a series of changes in their respective contracts²²⁷ and to sign a memorandum standardizing their security contracting practices.²²⁸

Conclusion

The security situation in Iraq did not improve in 2005.²²⁹ While it may be true that ‘three years of scandals and violence had dampened the gusto for hiring private security contractors’,²³⁰ DoD and DoS demand for PSC services remained robust. Rather than a dip in demand, corporate reports and interviews suggest that the bursting of the “bubble” in Iraq since 2005 has mainly been caused by tighter profit margins.²³¹ The demise of the CPA caused the torrent of “free money” to dry up and, as a result, clients expressed their changed valuation of the industry’s professionalism and service quality by no longer being willing to pay for either. As a result, Iraq and Afghanistan became very challenging market environments for PSCs, which the PSC literature has yet to recognize. The next section further illustrates this point by discussing the consequences for UK PSCs in particular.

Section Seven: The UK PSI during the “Bubble” and Its Aftermath

Rather than providing an exhaustive account of how the UK PSI was affected by the “bubble” and its bursting, this section focuses on those changes that have shaped UK PSCs’ behaviour.

The Relative Importance of Private Sector Demand

One such difference is the relative importance of private sector demand for UK PSCs.²³² Interviews suggest that most UK PSCs generate between 40-60% of their revenue from private sector clients.²³³ Contrary to that, US PSCs like *Dyncorp* earn up to 96% of their

²²⁵ Waxman (2006), p. 54ff, POGO (2011), p. 21ff.

²²⁶ Waxman (2006), p. 30ff, Bruneau (2011), p. 123.

²²⁷ Broader/Johnson (2007), DoD (2007).

²²⁸ DoD/DoS (2007).

²²⁹ SIGIR (2007), p. 78, GAO (2006 IV), p. 6.

²³⁰ Miller (2007), p. 288.

²³¹ See, for example, Blue Hackle Ltd (2008), p. 4, CRG (2006), p. 2. Worcester (2009), Phillips (2010).

²³² Donald (2006 II), p. xi.

²³³ Exceptions include Aegis (25%) and AKE and red24 (90-95%) (Spicer (2006), Drake (2011), Thompson (2008)).

revenue from public sector contracts.²³⁴ Moreover, UK PSCs' business model actually favours private sector clients: UK PSCs want to provide a 'holistic' service that combines analysis, strategy development and implementation, rather than simply putting 'boots on the ground'.²³⁵ Public sector clients, however, are more likely to rely on their considerable in-house expertise for analysis and strategic planning.²³⁶ The relative importance of private sector clients for UK PSCs is noteworthy, because interviews suggest that the private sector is even more sensitive to possible reputational costs.²³⁷ As one anonymous interviewee noted, a private sector client is 'more likely to switch provider or abandon his operations in a country than to explain the concept of "acceptable losses" to the *New York Times*'.²³⁸

Changes to the "PSC brand" in Iraq have also been particularly damaging for the UK PSI. UK PSCs are more likely than their US counterparts to trade on a reputation for being experienced and professional,²³⁹ to which the image of the "trigger-happy cowboy" that has become synonymous with PSCs in Iraq poses a formidable threat. Moreover, the low-margin business that providing security in Iraq and Afghanistan has become since 2005 is less attractive to established UK PSCs, due to the larger overhead they have to cover 'just to keep the lights on'.²⁴⁰ Indeed, their relatively more elaborate management processes proved disadvantageous in Iraq: Having no reputation worth protecting, many new entrants were less concerned about due diligence during contract negotiations. Also, they did not have to coordinate their actions in Iraq with management in London,²⁴¹ which made them more nimble when it came to attracting business. In many ways, *Custer Battle* is an example for this: One of its founders noted that they had won their first contract because they were 'young and dumb' and when they lacked the financing to staff and equip said contract, the CPA provided it with a loan – in the form of black duffel-bags filled with shrink-wrapped stacks of \$100 bills.²⁴²

²³⁴ Yeoman (2003).

²³⁵ Worcester (2009). See also Drake (2011), Claridge (2010).

²³⁶ Higgins (2011).

²³⁷ Drake (2011), Sorge (2009), Schenz (2009).

²³⁸ Anonymous 02 (2008).

²³⁹ Economist (2006).

²⁴⁰ Phillips (2010).

²⁴¹ Beese (2011), Toyne-Sewell (2011).

²⁴² Chandrasekaran (2006), pp. 154-155.

UK PSCs' Performance in Iraq and Afghanistan

These concerns may not have prevented UK companies from competing for business in Iraq - *red24* being a notable exception.²⁴³ However, few UK PSCs were among the main beneficiaries of US government spending that contributed to the “bubble” and sustained demand as the “bubble” burst in 2005 (see table II-4). It also seems that UK PSCs benefitted disproportionately in the early years of the Iraq occupation²⁴⁴ and, with exceptions,²⁴⁵ suffered disproportionately as the “bubble” burst. *Armorgroup*, for example, lost its contract guarding non-military convoys in 2006,²⁴⁶ forcing it to issue a profit warning and to eventually seek a buyer in *G4S* to prevent bankruptcy.²⁴⁷ *CRG*'s business in Iraq decreased by 24% in 2007²⁴⁸ and by 40% in 2008.²⁴⁹ Most UK PSCs seem to have pruned their operations in Iraq in response to changes in the business environment. *CRG*, for example, shifted its business away from providing diplomatic security to servicing commercial clients by 2010.²⁵⁰ As one competitor noted, ‘*CRG* never really bought into being a PSC’.²⁵¹ The fact that others followed its example – *Janusian* sold its Iraq operations in 2007²⁵² – suggests that the above statement has broader appeal in the UK PSI.

Table II-4: UK PSCs under Direct Contract or Subcontract with DoD, DoS and USAID²⁵³

UK PSC	Total (\$ Millions) 2003-2008	Rank
Aegis	798.6	2
Armorgroup	137.6	10
Erinys	108.1	11
Global	83.7	13
Hart	26.2	20
Olive Group	17.6	21
CRG	17.2	22
EI	11.8	26
Blue Hackle	0.9	40

²⁴³ Thompson (2008).

²⁴⁴ *CRG* provided protection to ORHA (Isenberg (2004), p. 31), while *Erinys* won the OFP (*Erinys* (2006)) and the Army Corps of Engineers contract (Fainaru (2007)). *Olive* and *Armorgroup* provided security to General Electric and Bechtel respectively (Schreier/Caparini (2005), p. 30).

²⁴⁵ *Aegis* rose from being a small maritime security consultancy in 2003 (Isenberg (2004), p. 30) to turning over £150 million in 2009 (*Aegis* (2009)).

²⁴⁶ Feinaru (2008), p. 89.

²⁴⁷ Toyne-Sewell (2011).

²⁴⁸ *CRG* (2007), p. 2.

²⁴⁹ *CRG* (2008 II), p. 2.

²⁵⁰ *CRG* (2010), p. 8.

²⁵¹ Toyne-Sewell (2011).

²⁵² *Janusian* (2007), p. 3.

²⁵³ Own elaboration based on SIGIR (2008), p. 16ff.

Moreover, while Iraq had filled their “war-chests”, many UK PSCs used these funds, again with exceptions,²⁵⁴ to diversify their business away from the market for PSC services in Iraq and Afghanistan into areas like travel²⁵⁵ and data security,²⁵⁶ screening services²⁵⁷ and systems security.²⁵⁸ Partly, this desire to diversify was rooted in the fact that, by 2006, UK PSCs no longer shared their US counterparts’ belief in the sustainability of government demand for PSC services.²⁵⁹ It is noteworthy that this diversification yielded very varied results: While *Olive’s* venture into systems security is widely seen as successful, few would say the same about *CRG’s* attempts. Said diversification was also an expression of the relationship between the UK government and the UK PSI: Initially, FCO and DFID spending on PSC services increased significantly with the invasion of Iraq,²⁶⁰ but ultimately it remained meagre compared to similar US government spending (see table II-5).

Table II-5: FCO and DFID Spending on PSC Services 2005-2008²⁶¹

Country	Type of Service	2005	2006	2007	2008
Iraq	Personal/ Mobile Security	£41,000,000	£21,949,907	£20,252,435	£20,800,843
	Static Security	£6,800,000	£6,903,489	£5,266,067	£5,715,764
	Various	No data	£577,973	£1,422,651	£2,341,829
Afghanistan	Personal/ Mobile/ Static Security	No data	£19,536,267	£20,321,543	£20,174,588
	Various	No data	No data	No data	£749,075

Moreover, since the financial year 2006/2007, the FCO has replaced *Armorgroup*, a British PSC, with *Garda World*, a Canadian company,²⁶² i.e. the UK government evidently does not feel obliged to “buy British” when it comes to its demand for PSC services. This suggests that the relationship between the UK government and UK PSCs is not defined by its commercial ties. Instead, the good relationship between the UK government and UK PSI seems to be

²⁵⁴ Aegis acquired Rubicon to strengthen its position in the market for PSC services (Boxell (2005), but it also recognized a need to diversify its customer base (Aegis (2007), p. 2).

²⁵⁵ CRG (2009), p. 8.

²⁵⁶ CRG (no year).

²⁵⁷ CRG (2008 II), p. 8.

²⁵⁸ Beese (2011).

²⁵⁹ Conversations at the IILJ conference in New York (24 March 2006) and the BAPSC conference in London (30 October 2006).

²⁶⁰ Reed (2010).

²⁶¹ For 2005 see FCO (2007), for 2006-2008 see FCO (2009 V).

²⁶² FCO (2009).

increasingly based on their political cooperation, which has yielded important successes on regulatory matters.²⁶³ Indeed, several interviewees compared this relationship favourably to the cantankerous one between the US government and its PSI,²⁶⁴ which worsened considerably after the 2006 Congressional Elections.²⁶⁵ Moreover, interviews with PSC representatives suggest that intra-sector cooperation in regulatory processes at the domestic and international level – through the BAPSC and bilaterally – greatly strengthened relations between individual UK PSCs.²⁶⁶

This section has stressed the specificities of the UK PSI, especially when compared to its US counterpart. One possible counterpoint to this analysis is that, while UK PSCs are traditionally seen to serve British commercial interests abroad,²⁶⁷ the UK as a market has become significantly less important. *Aegis*, otherwise an atypical UK PSCs, exemplifies a growing trend in the industry by generating 98% of its business outside of the UK.²⁶⁸ For *Hart Security*, the comparable figure has been 46-85% from 2005-2009,²⁶⁹ and *Blue Hackle* identifies ‘large American corporates’ as its main customers.²⁷⁰ While most UK PSCs did not disclose the geographic distribution of their earnings, interviews suggest the diminishing importance of the UK as a market to be an industry-wide trend.²⁷¹ As previously mentioned, tax and legal reasons have encouraged many UK PSCs to run parts of their operations through tax havens (see table II-5). However, several PSCs are now leaving the UK outright,²⁷² citing high taxes, the need for proximity to their clients and, especially, exchange-rate volatility as major risks to their business and, thus, causes for their move.²⁷³ This thesis’ conclusion will return to the curious question this trend raises, namely whether – unlike in the period under review in this thesis, when the UK PSI arguably still was distinctly British and perceived as such²⁷⁴ – the UK PSI will continue to maintain these characteristics or whether it is likely to become part of a homogeneous global industry.

²⁶³ Willcocks (2008), Reed (2010), Toyne-Sewell (2011).

²⁶⁴ Beese (2006), Lewry (2009).

²⁶⁵ Bruneau (2011), p. 219.

²⁶⁶ Toyne-Sewell (2011), Phillips (2010), Claridge (2010), Beese (2011).

²⁶⁷ Hodgson (1984), p. 93ff., Kinsey (2006), p. 48, Economist (2006).

²⁶⁸ Aegis (2009), p. 2.

²⁶⁹ The figure excludes its non-UK subsidiaries (Hart (2005-2009), p. 9).

²⁷⁰ Blue Hackle Limited (2005), p. 1.

²⁷¹ Claridge (2010), Phillips (2010), Willis-Fleming (2008).

²⁷² Aegis (2009), p. 2. Global is currently relocating to Dubai.

²⁷³ Legge-Bourke (2010), Norman (2010), GSG (2009), p. 3, Blue Hackle (2009), p. 1, Aegis (2009), p. 3.

²⁷⁴ Bearpark/Schulz (2007), p. 240, Economist (2006). See Conclusion Section 3.

Table II-6: Country of Incorporation of UK PSCs

Company	Country of Incorporation	Company	Country of Incorporation
<i>Drum Cussac</i> ²⁷⁵	Jersey	<i>Olive Group</i> ²⁷⁶	British Virgin Islands
<i>Hart Security</i> ²⁷⁷	Cyprus	<i>Erinys</i> ²⁷⁸	British Virgin Islands
<i>Global</i> ²⁷⁹	Luxemburg	<i>Aegis</i> ²⁸⁰	British Virgin Islands*
<i>Armorgroup/G4S</i> ²⁸¹	Jersey*	<i>CRG</i> ²⁸²	Jersey*
<i>Blue Hackle</i> ²⁸³	England & Wales	<i>red24</i> ²⁸⁴	England & Wales

* Denotes significant subsidiary established for tax/HR reasons

Conclusion

This section has shown that the UK PSI's distinct character, e.g. its dependence on the private sector and its resulting sensitivity to reputational risks, shaped its development in and its attitude to Iraq and Afghanistan. As one UK PSC representative described it: 'A lot of companies were "hot and cold" about Iraq',²⁸⁵ acknowledging both the new business opportunities and its primarily reputational risks for a fairly well-established industry. As a result, the "bubble" was not an unequivocal blessing for most UK PSCs: While they benefitted significantly from the increase in demand for their services, few companies were able to sustain their initial success and some even had to undo previous investments.²⁸⁶

²⁷⁵ Drum Cussac (2011).

²⁷⁶ Olive Group (2008), p. 5.

²⁷⁷ Hart (2007), p. 5.

²⁷⁸ Erinys (2010), p. 4.

²⁷⁹ Global (2010), p. 15.

²⁸⁰ Aegis (2009), p. 16.

²⁸¹ Toyne-Sewell (2011).

²⁸² CRG (2007), p. 27.

²⁸³ Blue Hackle (2009), p. 15. Blue Hackle has subsidiaries in Uganda and Bahrain.

²⁸⁴ Red24 (2010), p. 32. Red24 has subsidiaries in South Africa and the USA.

²⁸⁵ Worcester (2009).

²⁸⁶ CRG (2009), p. 8, Clissitt (2010).

PART III: Economics and Security Privatization

Section Eight: PSCs in the Literature on Economics

The literature review in Chapter One focused on the use of economic concepts in the PSC literature, yet it did not discuss how economists themselves view PSCs. This section addresses this omission. According to John Fredland, '[e]conomists have largely neglected the PMC phenomenon'.²⁸⁷ Moreover, the few economists that have joined the academic discussion on PSCs have done so by contributing to the debate in the fields of International Relations/Political Science, rather than within their own discipline.²⁸⁸ Correspondence with those economists that have published on PSCs/PMCs suggests that this lack of interest is primarily attributable to a lack of accessible empirical data on PSCs.²⁸⁹ Indeed, very few PSCs are stock-market listed²⁹⁰ and, thus, only subject to limited disclosure requirements as part of their fiduciary duties. This problem was epitomized by Eric Prince's refusal to disclose *Blackwater's* profit figures during a Congressional hearing.²⁹¹ As this chapter's frequent use of UK PSCs' corporate reports has shown, this problem does not apply to British PSCs to the same extent due to different accounting standards.²⁹² Moreover, lobbying groups that could function as data aggregators have yet to satisfactorily fulfil this function.²⁹³

Economics in the Literature on PSCs

While the "dismal science" has largely remained silent on PSCs, some economists have ventured outside of their discipline to criticize the use of PSCs. Joseph Stiglitz and Linda Bilmes, for example, base their claim that '[i]t does not make sense to privatize the military' on cost comparisons between PSCs and the military.²⁹⁴ However, the comparison they draw is so misleading – they compare the billing-rate for contractors (including all costs) with the pay received by a US Army sergeant (excluding all costs)²⁹⁵ – that the CBO singled it out for

²⁸⁷ Fredland (2004), p. 206. For management studies, see McGahan/Baum (2009), Dew/Hudgens (2009)).

²⁸⁸ Examples include Brauer (1999) and (2003), Eric Fredland (2004), Fredland/Kendry (1999) and Benson (2007), p. 451.

²⁸⁹ Fredland (2011), McGahan (2011).

²⁹⁰ Dew/Hudgens (2009), p. 31.

²⁹¹ Prince in DeYoung (2007).

²⁹² The widespread use of tax-havens admittedly complicates matters.

²⁹³ Stoppelkamp (2009), Schulz (2008). IPOA's State of the Industry studies yielded response rates of 6.1% and 13.6% (Messner/Gracielli (2007), p. 13).

²⁹⁴ Stiglitz/Bilmes (2009), pp. 12-13. See also Friedman (2009).

²⁹⁵ *Ibid.*, p. 12.

criticism.²⁹⁶ Unfortunately, this example appears to be representative of a broader problem associated with the use of economic concepts in the PSC literature.

As outlined in Chapter One, economic concepts play an important role in the PSC literature, either to make a case for or against the use of PSCs in reference to their cost-efficiency or to account for their motivations.²⁹⁷ While this thesis focuses on the latter discussion, the cost-efficiency debate nicely illustrates some of the problems affecting the use of economic concepts in the PSC literature. For instance, some criticism of the PSI seems to be driven by a general scepticism about contemporary capitalism as much as by a genuine concern about the use of PSCs. Sheehy *et al*, for instance, claim that ‘the corporate form is dedicated to outsourcing social costs and privatizing profits’.²⁹⁸ More often, economic concepts are selectively employed to support rather tendentious statements. Stieglitz and Bilmes’ comparison falls into that category, as do attempts to exclude the costs of training and R&R for soldiers by comparing the deployment rather than the lifetime costs of soldiers and PSCs.²⁹⁹ Similarly misconceived from an economist’s perspective is Isenberg’s argument that, since PSCs employ ex-soldiers that were trained using public funds, said costs ought to be included in the costs of privatizing security.³⁰⁰ Indeed, such expenses would be considered as sunk costs and thus not included.³⁰¹

Conclusion

This section illustrates two important considerations for the broader debate about PSCs. First, the use of economic concepts will not provide a definitive answer to whether security ought to be privatized. As Brauer stresses, ‘economics can inform the PMC debate but not decide it’.³⁰² The cost-efficiency of PSC use is a product of its situational and contextual specifics, i.e. what type of PSCs is used, for what purpose and how the relationship is managed. Moreover, cost efficiency is a relative measure that varies depending on how and what PSCs are compared against. Whether PSCs are cost-efficient is thus likely to differ on a

²⁹⁶ CBO (2008), p. 14.

²⁹⁷ See, for example, POGO (2011), Erik Prince in Isenberg (2009), p. 23.

²⁹⁸ Sheehy *et al* (2009), p. 7.

²⁹⁹ POGO (2011), pp. 21-23. Deployment and lifetime costs differ considerably from one another, because contractor costs fall significantly during peacetime (CBO (2008), p. 17).

³⁰⁰ Isenberg (2009 III), p. 24. See also Peters (2007).

³⁰¹ Frank/Bernanke (2007), p. 10. Neither the CBO nor the GAO includes such training costs in its cost comparisons (CBO (2008), pp. 16-17, GAO (2010)).

³⁰² Brauer (2003), p. 1.

case-by-case basis.³⁰³ Secondly, as the example of deployment vs. lifetime costs has shown, great care needs to be taken in the selection and application of economic concepts to assure that the resulting analysis is not distorted. This is particularly salient in the use of economic concepts to characterize the motivation of PSCs, which lies at the heart of this thesis.

Section Nine: Privatization and New Institutionalism

While the previous section discussed the PSC literature's use of economic concepts in general, this section takes a closer look at a concept that is central to the literature's understanding of PSC behaviour: By featuring prominently both in Deborah Avant's *The Market for Force* and Peter Singer's *Corporate Warriors*, John Donahue's *The Privatization Decision* has shaped the PSC literature's view of private and public agents.³⁰⁴ This section briefly explores to what extent Donahue's distinction between private and public agents is supported by the sub-field within economics that he draws on and for which he, to a certain extent, is a conduit: *New Institutional Economics*.

Despite his various caveats,³⁰⁵ Donahue depicts *The Privatization Decision* ultimately as a binary choice between public and private agents that differ significantly from one another.³⁰⁶ Indeed, inherent differences between public and private actors seem to be central to much of the privatization debate in general.³⁰⁷ Donahue's argument draws on, *New Institutional Economics* (NIE), namely the work of Oliver Williamson,³⁰⁸ which has also found its way into the PSC debate.³⁰⁹ Williamson focuses on transaction cost economics (TCE), i.e. the costs incurred by transacting through different organizational forms.³¹⁰ Drawing on Ronald Coase's seminal essay *The Nature of the Firm*,³¹¹ Williamson does not dispute the efficiency of

³⁰³ POGO (2011), p. 22.

³⁰⁴ See Chapter 1 Section 5.

³⁰⁵ Donahue recognizes 'organizational alternatives', but chooses to focus on 'pure types' of private and public agents (Donahue (1989), p. 39).

³⁰⁶ Donahue (1989), p. 40ff.

³⁰⁷ Feigenbaum *et al* (1998), p. 2ff, Grey (2005), p. 26ff,

³⁰⁸ Donahue draws on a broad range of economic concepts, including property-rights theory, limited information, rent-seeking, allocative vs. x-efficiency and collective action problems, but he particularly stresses the importance of Williamson's work (Donahue (1989), p. 229).

³⁰⁹ See Williamson (1999) in Avant (2005), pp. 54-55, Fredland (2004), p. 209ff, Brauer (2006), p. 7 and Williamson (1996) in Dickinson (2011), p. 148.

³¹⁰ Williamson (1999), p. 307. While NIE is not limited to TCE (*Ibid.*, See also Rutherford (1994), p. 2ff), the following discussion focuses on those aspects of NIE that feature in the PSC literature.

³¹¹ Coase (1937), p. 386ff. Donahue recognizes Coase as another important influence on his writing (Donahue (1989), p. 229).

markets, but contends that under certain conditions of uncertainty, if assets are highly specific, transactions are conducted infrequently and there is a high need for probity, transacting through the market may be relatively expensive compared to transacting through hierarchical forms of organization.³¹² Public bureaucracies represent such a hierarchical form of organization,³¹³ but they are hardly the only form. Indeed, when Williamson and Coase compare hierarchies and markets, the hierarchical organizational form they have in mind is the firm - not the public bureaucracy. Bruce Benson echoes this point by highlighting that privatization can take various forms: At the one extreme, ownership and control over an activity is completely abandoned, at the other extreme a more benign outsourcing of an activity is conceivable, where control and responsibility are retained.³¹⁴ Moreover, Williamson allows for hybrid forms of 'quasi-privatization' and even identifies conducive regulation.³¹⁵ This suggests that Williamson views public and private agents not as a binary choice between two polar opposites, as it is arguably presented in *The Privatization Decision* and, by extension, in the PSC literature. Instead, private and public provision can take a variety of forms, which are more or less hierarchical/market-based.

Furthermore, Williamson 'sovereign transactions' are *per se* to be provided by a public sector bureaucracy, but he sets out a set of conditions under which 'politics is different', i.e. when the costs of using the market for 'sovereign transactions' becomes prohibitively high: uncertainty, asset specificity, infrequency and probity.³¹⁶ Moreover, he stresses that '[b]ecause all feasible modes of organization are flawed, the strengths and weaknesses of each candidate mode need to be assessed comparatively'.³¹⁷ It is not sufficient to show that market-based transactions are costly, but other organizational forms have to yield more efficient outcomes.³¹⁸ This point is given further importance by the possibility of hybrid forms, which may be superior to both "purely" hierarchical and market-based organizational forms.

³¹² Williamson (1999), p. 322. See also Coase (1937), p. 391-392, Williams (1975), p. 9, Medema (1996), p. 572. The following discussion focuses on Williamson (1999), as it directly addresses the choice between public and private agents.

³¹³ Williamson (1999), pp. 308-310.

³¹⁴ Benson (2007), pp. 451-452.

³¹⁵ Williamson (1999), pp. 334-336.

³¹⁶ Williamson (1999), p. 340.

³¹⁷ *Ibid.*, p. 307.

³¹⁸ *Ibid.*, p. 338.

Unfortunately, the PSC literature has yet to fully explore Williamson's arguments. An even more salient point is highlighted by Benson's critique of Avant's *The Market for Force*. Benson chides Avant's choice of economic theory, which he describes as 'drawing most heavily from Oliver Williamson's writings', as too narrow.³¹⁹ While Benson's criticism is not unjustified, compared to the wider PSC literature, Avant's work is exceptional for its extensive engagement with economic concepts. Most authors seem to outright ignore economic theory, even when it comes to understanding key economic concepts like competition,³²⁰ volatility,³²¹ contracts³²² and sunk costs.³²³

Finding an Audience

Another two of Benson's criticisms show that the aforementioned disconnect between economic theory and the PSC literature has important implications for this thesis' choice of focus. Benson criticizes that Avant does 'not actually build a model', at least not in the formal, economic sense, as well as her 'simultaneous application of sociological and economic models'.³²⁴ As Benson would likely pose similar criticisms against this thesis' approach,³²⁵ they need to be briefly assessed.

Essentially, neither criticism applies to this thesis, since its intended audience is not that of economics, but the debate about PSCs, which is dominated by political scientists, IR scholars, lawyers and PSC representatives. Given its choice of audience, this thesis has to assure that its use of economic theory remains accessible to non-economists. Indeed, in interviews, PSC representatives frequently criticized that most of the research into PSCs is 'useless' to the industry.³²⁶ This precludes the use of a formal model, especially given the 'mathematising inclination' of traditional economics.³²⁷ Moreover, it is questionable whether the social embeddedness of economic action can at all be quantified and thus be appropriately expressed in a formal model. Tellingly, the sub-fields of economic theory borrowed from most heavily in this thesis generally make little use of formal models, either because they

³¹⁹ Benson (2007), p. 455.

³²⁰ Jennings (2006), p. 21. See also Chapter 4, especially Section 1.

³²¹ Bailes/Holmqvist (2007), p. 5.

³²² Singer (2003), p. 151ff. and 281ff.

³²³ Isenberg (2009 III), p. 24. See also Peters (2007).

³²⁴ Benson (2007), p. 455. See also Brauer (2006), p. 1.

³²⁵ Benson (2011).

³²⁶ Donald (2006), Kroha (2009).

³²⁷ Lawson (2006), pp. 488-489.

have yet to find a meaningful way of doing so³²⁸ or because they reject formal modelling as a question of principle.³²⁹

Conclusion

Benson's reproach against an inter-disciplinary approach seems to be similarly misguided. Instead, informed by the core tenets of economic sociology, this thesis holds that an inter-disciplinary approach can unlock original and relevant insights for understanding PSC behaviour. Combining the new (economics) with the familiar (sociology) should make the approach taken by this thesis even more palpable for the PSC literature. It is worth noting, however, that the practice of combining economics and sociology has its critics among sociologists as well.³³⁰ One concern, which this thesis and economic sociology more generally seeks to overcome, is that the result of an inter-disciplinary approach could not be a dialogue between the two disciplines, but a displacement of sociology by economics in the analysis of human behaviour.³³¹ Indeed, chiming with economic sociologists, this thesis recognizes both the risk of 'over- and under-socializing' any analysis.³³² This thesis' approach, therefore, does not obviate the need for more "purely" economic or sociological research on PSCs.

Conclusion

In addition to discussing the relationship between economics and the PSC literature, this chapter has added substance to the analytical scheme outlined in Chapter One. Its review of the development of the PSI prior to 2003 and of the associated literature identified weaknesses in the prevalent literature's definition and resulting typology. Since these weaknesses are ultimately owed to a broad definition of private military and security providers, this chapter also provided further support for the narrow focus employed by this thesis. Turning to the use of PSC services in Iraq and Afghanistan from 2003-2009, the chapter emphasised the importance of conditions and catalysts specific to Iraq for the emergence of the "bubble", suggesting that they may have been more decisive than changes associated with the end of the Cold War. It further identified institutional changes and

³²⁸ Coase (1992), p. 719.

³²⁹ Lawson (2006), pp. 488-489.

³³⁰ Hirsch *et al* (1987), p. 317ff.

³³¹ *Ibid.*, Bourdieu (2005), p. 83.

³³² Granovetter (1985), p. 483.

evolving perceptions of PSCs and their services as the main reason for the bursting of the “bubble” since 2005. Moreover, the chapter established the UK PSI as a distinct group within the PSI during the period under review.

Chapter Three sets out the actual analysis of UK PSC behaviour. According to Sarah Percy, ‘[t]here are very few industries that operate in a fashion analogous to PSCs’.³³³ While Percy’s statement may have merit from the point of view of a regulator, the following chapters will argue that, from a business perspective, the UK PSI shares many aspects with companies in other industries – specifically with regards to labour relations, market dynamics and customer relations. By taking a closer look at individual PSCs, Chapter Three will provide an insight into their decision-making processes and their underlying motivations.

³³³ Percy (2006), p. 38.

Chapter 3: Decision-Making Processes in Individual UK PSCs

A man who fights for coin is loyal only to his purse.

G.G. Martin, *The Game of Thrones*¹

While customers and regulators may influence PSC behaviour, the decision of how to act ultimately lies with PSCs and their employees. Hence, this analysis of UK PSC behaviour focuses on the individual PSC, the smallest aggregate in the PSI, and its decision-making process.

As previous chapters have shown, assumptions about PSCs' motivation play an important role in the literature's discussion of their behaviour. To date, the literature's assumptions are not based on an in-depth analysis of a PSC's internal decision-making process, its participants and their underlying motivations. Indeed, the literature on security privatization has largely looked at, rather than into, PSCs and their structural characteristics: In this understanding, PSCs are for-profit companies and, therefore, presumed to be primarily motivated by financial profit.

This chapter largely rejects the prevalent "structure is destiny" argument and, instead, uses the behavioural theory of the firm and the concept of professionalism to open the "black box" of PSC decision-making. While UK PSCs are first and foremost businesses, the sort of deterministic pursuit of financial profit the literature envisions is rarely evident in their motivations. Individually, motivations in the PSI are more complex and, influenced by professional norms and values, gravitate strongly towards non-financial aims. This has implications for PSC decision-making processes, as PSCs lack the management processes to force and the incentive structures to persuade their employees to align their interests with the aim of maximizing corporate profit. Moreover, it is questionable if PSCs actually know which behaviour is actually profit maximizing in the long-term. Instead, faced with uncertainty and ambiguity, PSCs frequently rely on professional norms and values to inform their decision-making to assure the long-term sustainability of their business.

¹ Martin (1997), p. 670.

Outline

Part one: Section one revisits the prevalent conceptualization of PSC motivation, specifically its evolution from a need to differentiate PMCs and PSCs from mercenaries. It criticizes the literature's lack of nuance and evidentiary support. Section two focuses on PSC employees' financial incentive structures and shows that they participate neither directly nor indirectly in corporate profit. Section three outlines how PSC employees' economic interests clash with the aim of maximising corporate profit. Finally, section four argues that PSCs' ability to force their employees to align their interests with the aim of maximising corporate profit is rather limited. Part one concludes by pointing out that the conflicting aims of PSCs and their employees, if unresolved, may result in conflict of great potential costs for both parties - thus creating a strong incentive to compromise. It further suggests that professionalism not only provides the catalyst for such cooperation, but also informs the resulting compromises.

Part two: Section five shows how the literature's view on PSC professionalism diverges from the industry's self-perception. In particular, the argument that PSCs lack the institutional pre-requisites to develop a strong professionalism merits closer attention. Section six sets the PSC literature's critique of professionalism in the broader context of the study of professions. It argues that said critique ignores the varied and dynamic nature of professionalism and is too focused on the structural characteristics of professionalism. Sections seven and eight discuss the extent to which the UK PSI presents the functional, structural, monopolist and cultural characteristics associated with professionalism and argue that professionalism in the PSI should be seen as an extension of military professionalism. Drawing on the works of Abbott and Burk, section nine discusses differences in their respective understandings of professionalism, before using the notion of professionalism as competition for jurisdiction to shed light on the relationship between professionalism in the UK PSI and military professionalism. Section ten concludes this chapter's analysis by suggesting a new conceptualization of PSCs' and their employees' motivations by proposing that PSCs are primarily motivated by their corporate survival. This explains why PSCs are generally willing to compromise and why labour relations sometimes deteriorate into open conflict.

Part I: In Search of the Corporate Interest

Section One: The Prevalent View on PSC Motivation

Given how central the literature's assertions about PSCs' motivation are to its objections against their use, it is surprising how little efforts have been made to study the latter. Survey data are scarce – so much so that Volker Franke and Marc von Boemcken noted in their 2011 survey that '[t]o date, we know very little about the people who sign on with [PSCs]'.² Since the motives of those working for PSCs are not homogenous, this thesis will use the terms "PSC representatives" and "PSC employees" to distinguish, respectively, between individuals in managerial roles and those that are merely employed by PSCs. These terms denote poles on a spectrum rather than clear-cut categories, which becomes evident when they are applied to mid-management positions: On the one hand, mid-management sports many characteristics of PSC employees: They receive orders rather than issue them, they are strongly involved with operational matters and they sport a relatively high turnover. On the other hand, they occupy positions of authority, they are often involved in strategic management decisions, especially in smaller PSCs, and a larger share of their pay is tied to the company's performance. Still, the distinction between "representatives" and "employees" provides useful insights into divergent motivations within UK PSCs. Frank and von Boemcken's observation about the lack of information concerning PSC representatives' and employees' motives is hardly attributable to a lack of data. Many PSC representatives are happy, even eager, to talk to researchers.³ Gaining unvetted access to PSC employees, particularly "on the ground", is admittedly more difficult – physically, due to their insecure operational environment and because they are often contractually prohibited from giving interviews.⁴ However, PSC employees have published biographical accounts,⁵ blogs,⁶ internet fora⁷ and even a podcast series, the *Combat Operator Radio*,⁸ to share information and publish their perspectives on industry matters. Moreover, once they are granted

² Franke/von Boemcken (2011), p. 2.

³ Donald (2006 II), p. x.

⁴ Beese (2011), Phillips (2010). See also Schaub/Franke (2009), p. 95.

⁵ On the value of memoirs for understanding PSC motivation, see Higate (2009), p. 5ff.

⁶ Examples include Matt Loe's *Feral Jundi* and Tim Lynch's *Free Range International*, Eeben Barlow's *Military and Security Blog*.

⁷ Examples include www.closeprotectionworld.com, www.socnet.com, www.secureaspects.com, www.dangerzonejobs.com and www.aprodex.com.

⁸ COR (2009 I-XV).

anonymity, many PSC employees agree to being interviewed despite their contractual obligations.

The Origins of the Literature's Views on PSC Motivation

That little is known about the motivations of PSC representatives and employees is largely attributable to how the literature defines private military and security providers in contrast to mercenaries. Singer argues that, unlike mercenaries, PSCs are motivated by 'business profit rather than individual profit', which he attributes to the permanence of their corporate structure.⁹ He further suggests that '[t]he key is that it is not the person that matters, but the structure that they are within'. Singer's definition, focusing on corporate motivation, came to be widely accepted and led the PSC literature to pay little attention to PSCs' organizational structure and to their employees' motivations.

Singer further stipulated that, as for-profit entities, PSCs are 'driven neither by goodwill nor honor, but rather by profit'¹⁰ – an assertion widely echoed in the PSC literature.¹¹ However, while Singer emphasised the permanence of their corporate entity as a restraining influence on PSC behaviour,¹² authors more recently stress their "naked" profit interest. Petersohn, for example, claims that a PSC's 'decision-making process is always based on a cost-benefit analysis',¹³ while Perlo-Freeman and Sköns believe that PSCs have a 'vested interest in the perpetuation of such conflicts'.¹⁴ Authors are notably more cautious when it comes to describing individual motivation. For example, Spearin, like many others, stresses the greater earning potential of SOF personnel in the private sector and their prevalence in the PSI,¹⁵ but he does not explicitly claim that their decision to join a PSC and their subsequent actions in the industry are solely motivated by financial profit. Still, most seem to agree with Petersohn, who argues that, since their pay is higher than what they 'would earn performing the same service for their own respective militaries, the PSCs can be assumed to be fighting for money'.¹⁶ Indeed, some authors even consider PSCs' allegedly exclusive focus on profit to be a boon. Since PSCs are not interested in anything but financial profit, they are believed to

⁹ Singer (2003), pp. 44-45.

¹⁰ Singer (2003), pp. 151-152.

¹¹ Chwastiak (2007), p. 4, Sheehy *et al* (2009), p. 35.

¹² Singer (2003), p. 47.

¹³ Petersohn (2008), p. 8.

¹⁴ Perlo-Freeman/Sköns (2008), p. 14.

¹⁵ Spearin (2006), pp. 59-60. See also Bailes/Holmqvist (2007), p. 6, Jennings (2006), p. 40, Schreier/Caparini (2005), pp. 20-21.

¹⁶ Petersohn (2008), p. 61. See also Pattison (2010), p. 434.

be politically neutral, without ‘a particular ideology or interest’.¹⁷ This argument poignantly illustrates the limitations of the prevalent view on motivation in the PSI: PSC representatives and employees presumably do not cease to subscribe to an ideology or (political) interests upon joining a PSC, yet the literature’s conceptualization lacks the nuance to capture anything but their interest in financial profit.

Weaknesses in the Literature’s Characterization of PSC Motivation

Another weakness is the lack of conclusive evidence provided in support for this structural approach. Instead, Machiavelli’s warnings against employing *condottieri* are frequently cited in the PSC literature,¹⁸ despite numerous concerns about its historical veracity.¹⁹ The lack of other corroborating evidence suggests that claims about PSC motivation are mainly buttressed by historical stereotypes about mercenaries. This lack of evidentiary support is partly due to the fact that the literature has so far paid little attention to the motivation of PSC employees and representatives. If at all, the topic featured in the discussion about soldiers leaving the military for the PSI. Indeed, said discussion neatly illustrates how the debate about motivation in the PSI has remained largely theoretical: While Spearin and Krahmann identify higher wages as responsible for soldiers leaving the military to join the PSI,²⁰ Pattison admits that there are no data to substantiate such a claim,²¹ only to claim that ‘it would be odd if the high wages on offer were not a key motivating factor’.²² Kinsey, however, suggests that high op-tempo and bad housing in the military are to blame,²³ but likewise fails to present any supporting data.

Conclusion

While not questioning that PSCs are ultimately profit-driven entities,²⁴ this thesis challenges the absolutism, with which the literature attributes all PSC behaviour to being motivated by financial interests. The literature’s claims belie PSCs’ limited organizational power and their volatile operational environment and thus underestimate the influence PSC employees can exert on corporate decision-making processes. It is, therefore, not just the lack of nuance in

¹⁷ Jennings (2006), p. 24. See also Cowen (2007), Pelton (2006), p. 218.

¹⁸ Avant (2006), p. 249, Percy (2007 II), p. 60.

¹⁹ Lang (2005), Brauer/van Tuyll (2008), p. 80ff. See also Chapter 6, Section 1.

²⁰ Krahmann (2010), pp. 216-218, Spearin (2006), p. 60.

²¹ Pattison (2010), p. 434.

²² *Ibid.*, p. 434.

²³ Kinsey (2011), p. 566.

²⁴ PSCs often rely on outside investors (BVCA in Armorgroup (BVCA (no date)) and 3i in CRG (CRG (2005), p. 17). To retain their support, PSCs have to turn a healthy profit.

the literature's characterization of PSC motivation nor its failure to provide supporting evidence to which this thesis objects: The literature also fails to account for how PSCs overcome their structural limitations and the divergent interests of their workforce to create the alleged single, coherent corporate interest in financial profit.

Section Two: Incentive Structures in the PSI

This section takes a closer look at labour relations in the PSI by focusing on its economic underpinnings. This is not to suggest that financial interests are more important than non-financial interests nor that the two are fully substitutable. Indeed, much of this chapter argues that an excessive focus on financial interests provides at best an incomplete and thus distorted understanding of motivation in the PSI. However, financial interests are nonetheless important. Understanding them provides a good starting point for exploring the more complex issue of what motivates PSCs and their employees.

Economics and the Behavioural Theory of the Firm

Generally, economics is believed to have limited applicability to the study of motivations. According to Brauer, motivations 'constitute a "black box"' for traditional economists,²⁵ who instead focus on incentives.²⁶ Hence, Donahue's characterization of public and private agents does not centre on the civic-mindedness of civil servants nor the greediness of private sector agents, but on their different means of compensation.²⁷ Similarly, while the PSC literature focuses on compensation in the PSI by reducing PSCs' motivation to their alleged interest in corporate profit, Blyton and Turnbull argue that 'within organizations a common interest [e.g. in corporate profit] cannot be assumed, willed, or "managed" into existence'.²⁸ A similar observation that emphasises the divergent interests within a company lies at the heart of the *Behavioural Theory of the Firm*.²⁹ Contrary to standard microeconomic theory,³⁰ it stresses that companies are 'large, complex organizations', whose actions are not 'completely determined' by the market.³¹ Like Blyton and Turnbull, its

²⁵ Brauer (2003), p. 210. See also Rowlinson (1997), p. 7.

²⁶ Levitt/Dubner (2006), p. 21ff. Traditional economics models company behaviour as a reaction to market signals, i.e. prices (Rowlinson (1997), pp. 13-14).

²⁷ Donahue (1998), p. 39ff.

²⁸ Blyton/Turnbull (2004), p. 4.

²⁹ Cyert/March (1963), March/Simon (1958).

³⁰ Douma/Schreuder (2002), p. 95.

³¹ Cyert/March (1992), p. 1.

proponents Cyert and March argue that the resulting “room” afforded by the market is not just for management to use in its pursuit of maximum corporate profit: ‘[W]e cannot assume that a rational manager can treat the organization as a simple instrument in his dealings with the external world’.³² Rather than a ‘unified entity’ with a ‘single objective’,³³ the *Behavioural Theory of the Firm* portrays firms as ‘coalitions of participants’ with divergent interests.³⁴ While PSCs as abstract corporate entities may be interested in corporate profit, the PSC literature fails to account for why their employees should share this interest.

Direct and Indirect Participation in Corporate Profits

An obvious reason for employees to align their interest would be their profit participation. However, significant direct participation, either through equity or profit-participation programs, is uncommon among UK PSCs. Those annual reports that identify individual shareholders show considerable overlap between the ownership and management.³⁵ This overlap is, however, limited to the upper echelons of senior management and therefore includes only a small fraction of the overall workforce of UK PSCs.³⁶ Employee share programs that extend corporate ownership to a wider share of the workforce are rare³⁷ and, while interviews suggest that bonuses are more common, they also indicate that, aside from senior management, they do not constitute a substantial part of PSC employees’ compensation.³⁸ Crucially, interviewees noted that employee share programs and bonuses primarily benefit a PSC’s permanent workforce, rather than the often considerably larger group of temporary employees.³⁹ One interviewee even suggested that, while some PSCs would pay year-end and contract renewal bonuses to their temporary staff, the signing bonus and wage increase one could earn by switching companies would often be higher.⁴⁰ As a result, the majority of UK PSC employees, much like their counterparts in the state-organized military, are compensated by fixed-wage contracts and thus do not directly participate in corporate profit.

³² *Ibid.*, p. 202.

³³ Douma/Schreuder (2002), pp. 31-32.

³⁴ *Ibid.*, p. 95ff.

³⁵ Aegis (2005), p. 1, Blue Hackle (2009), p. 18, CRG (2010), p. 11, Janusian (2009), p. 9, Pilgrims (2010), p. 18, red24 (2010), p. 6.

³⁶ Pilgrims Group and AKE are owned by their respective directors (Pilgrims (2010), p. 17), Drake (2011)).

³⁷ Notable exceptions include CRG (2002), p. 2 and red24 (2010), p. 26ff).

³⁸ Claridge (2010), Thompson (2011), Drake (2011).

³⁹ Higgins (2011), Lynch (2011), Edwards (2011).

⁴⁰ Smith (2005).

Indirect profit participation, i.e. the risk of job loss should a company go bankrupt, is also unlikely to be significant. The perceived risk of bankruptcy is likely to be low, as few companies have failed in recent years and because employees tend to overestimate their employers' financial health. Often financial troubles also result in a take-over rather than in the PSC's dissolution and thus have little consequence for employees. While data are scarce, G4S's acquisition of *Armorgroup* may be instructive: Part of the value of a company often lies in its contracts.⁴¹ To prevent disruptions to the provision of security services, clients are likely to support a take-over aimed at rescuing an ailing PSC. Finally, should a company go bankrupt, the consequences for its employees are unlikely to be significant in the long-term. Skills are highly transferable within the PSI and temporary employment is rife, which greatly facilitates switching jobs.⁴² Indeed, the consequences of a bankruptcy for an individual employee may be similar to those of losing a contract: In an effort to quickly staff their newly acquired contracts, companies often retain employees from the PSC that missed out.⁴³

Conclusion

Therefore, due to little direct or indirect profit participation, most UK PSC employees have little reason to align their interests with the aim of maximizing corporate profits. This raises a broader question, which the following two sections address: How does a PSC, as "coalition of participants", create a single, coherent interest in maximizing corporate profit, as envisaged by the literature?

⁴¹ Phillips (2010), Claridge (2010), Worcester (2009).

⁴² Lynch (2011), Norman (2010).

⁴³ Higgins (2011), Brooks (2005).

Section Three: Interests in Individual PSCs

This section argues that UK PSC employees in Iraq and Afghanistan do not tend to share the aim of maximizing corporate profit. Indeed, the level of compensation is an obvious source of friction in employee relations. However, several factors specific to the PSI in Iraq and Afghanistan from 2003-2009 rendered compensation questions particularly contentious.

Market Volatility and Wage Expectations: One such factor is the volatility in the market for PSC services and the time lag with which wage expectations adjust. Biographical accounts and interviews suggest that UK PSC employees in Iraq and Afghanistan felt that managements were increasing corporate profits at their expense, especially when wages started to fall in 2005.⁴⁴ This perception was reinforced by PSI's media portrayal. Following the 2005 killing of four *Blackwater* employees in Fallujah, media attention increased significantly and emphasised the industry's boom since 2003 and the high wages contractors could earn.⁴⁵ Meanwhile, however, the market for PSC services had already slowed considerably. Hence, wage expectations remained high in 2005-2006, but UK PSCs were no longer willing nor able to meet them, provoking significant frictions with their employees.⁴⁶ A telling example for just how cantankerous labour relations became occurred in 2006: CRG was only able to renew its contract with the FCO at considerably lower rates.⁴⁷ When it tried to reduce employee compensation accordingly, staff threatened mass resignation and strikes.⁴⁸

Monetary and Non-Monetary Benefits: The PSI's employment structure also rendered compensation questions contentious. Compensation consists of an employee's monetary benefits, i.e. a wage and bonuses, and non-monetary benefits, e.g. free flights home, insurance cover and personal security equipment. Interviews suggest that due to differences in personal preferences PSC employees focused primarily on their wages.⁴⁹ Indeed, divorced PSC employees would value free flights less and, instead, prefer higher wages.⁵⁰ Yet, contentious employee relations also played a role: Afraid that employers would cut corners, some PSC employees suggested that they preferred to purchase their own insurance and

⁴⁴ Shepherd (2008), pp. 266-267, Low (2007), p. 277, Lynch (2010).

⁴⁵ Robertson (2006).

⁴⁶ Low (2007), p. 201, Shepherd (2008), p. 262, Geddes (2006), p. 36, Higgins (2011), Lynch (2010).

⁴⁷ Isenberg (2009), p. 86. FCO spending dropped from £41 million to 21.9 million (FCO (2007+2009 V)).

⁴⁸ Chong/Beeston (2006), Bruce (2006).

⁴⁹ Toyne-Sewell (2011), Edwards (2011).

⁵⁰ Deniger (2008), Toyne-Sewell (2011).

personal security equipment.⁵¹ Additionally, there is evidence that some PSCs failed to deliver promised non-monetary benefits, especially personal security equipment.⁵² It remains unclear whether this was due to corporate greed or their ineptitude in dealing with administrative challenges in Iraq and Afghanistan. Yet, the fact that PSC employees would attribute these actions to corporate greed illustrates the poor state of PSI labour relations.

Job Security and Career Advancement: Job security and the prospect of career advancement may lessen employees' focus on their wages and promote greater goal alignment. However, most PSC employees work on short-term contracts with little job security. Indeed, when some PSCs tried to force their employers into annual salary contracts, many resisted because added job security in their eyes did to compensate for the envisaged wage reduction.⁵³ This is partly attributable to the perceived ease with which PSC employees can be fired. Low captures a prevalent sentiment by stating that 'the firm could sack me for having my eyes too close together'.⁵⁴ Given that PSC employees are often hired through off-shore subsidiaries, their rights are indeed largely unenforceable.⁵⁵ PSC employees also attach little value to job security, because the job hunt in the PSI does not represent a significant threat. While collective action remains rare, PSCs employees will "vote with their feet" if better compensation is offered elsewhere.⁵⁶

Wage Transparency and Changes in the PSI Workforce: The *Behavioural Theory of the Firm* suggests that, if wage transparency is high, employees are more likely to be dissatisfied and seek out new employment.⁵⁷ While such information is usually scarce and compensation packages are difficult to compare,⁵⁸ wage transparency has been very high in the PSI in Afghanistan and Iraq, as PSC employees use newsgroups and internet forums to compare their compensation packages. Moreover, interviews with PSC employees suggest that, once in country, their compensation packages were 'all we ever talked about'.⁵⁹ PSC employees

⁵¹ Higgins (2010), COR (2009 XI, XII and XIV).

⁵² Shepherd (2008), p. 66, Edwards (2011), Pelton (2006), p. 128, Geddes (2006), pp. 32-33.

⁵³ Shepherd (2008), p. 245.

⁵⁴ Low (2007), p. 78.

⁵⁵ McDonald *et al* (2007).

⁵⁶ Toyne-Sewell (2011), Worcester (2009).

⁵⁷ Douma/Schreuder (2002), pp. 96-97.

⁵⁸ *Ibid.*

⁵⁹ Higgins (2011). See also Ashcroft (2006), p. 83, Geddes (2006), pp. 48-49.

also insist that this willingness to share information about compensation packages was primarily motivated by a desire for fair compensation.⁶⁰

Interview data and biographical accounts by PSC employees further indicate a broader concern about the PSI, particularly the lowering of standards and the internationalization of its workforce.⁶¹ This highlights two important points that feature prominently in this thesis: First, PSC employees' concerns about wider PSI developments suggest a degree of "ownership" that seems to be at odds with the temporary commitment that PSCs ascribe to their employees. Secondly, highly qualified employees argue that the internationalization of the PSI's workforce increases their own risk exposure and that therefore their compensation should increase.⁶² This suggests that they regard their compensation to be fairly determined only when taking into account factors other than supply and demand.

Different Attitudes to the Employee Relationship

Interestingly, interviews seem to suggest that PSCs are far less critical about their employees than *vice versa*. While PSC representatives reject accusations of profiteering at their employees' expense, they admit to equipment shortages but regard the CPA and local authorities as largely responsible.⁶³ In reference to TCNs and local staff, they argue that highly-qualified expat staff are much better suited to the management of security rather than to its immediate provision. Moreover, PSC employees' concerns about the quality of TCNs and local staff are said to be exaggerated.⁶⁴ Generally, wage cuts are attributable to clients pushing down prices for PSC services rather than PSCs' attempt to increase profit margins.⁶⁵ Although accepting that the use of temporary labour is not conducive to strong loyalties, PSC representatives maintain that more permanent solutions would be prohibitively expensive.⁶⁶ Moreover, they regard most of their employees as only working in the PSI for a few years 'until their [military] pension kicks in'.⁶⁷ Therefore, efforts to promote greater corporate loyalty are seen to be uneconomical.

⁶⁰ Shepherd (2008), p. 2,

⁶¹ Ashcroft (2006), p. 57, Shepherd (2008), p. 246, Edwards (2011), Geddes (2006), p. 37.

⁶² Geddes (2006), p. 37, Shepherd (2008), p. 57.

⁶³ Phillips (2010), Willis-Fleming (2008), Toyne-Sewell (2011), Worcester (2005).

⁶⁴ Worcester (2005), Donald (2006).

⁶⁵ Worcester (2009), Willis-Fleming (2008).

⁶⁶ Phillips (2010), Toyne-Sewell (2011).

⁶⁷ Worcester (2009). See also Toyne-Sewell (2011), Donald (2006).

The contentious relationship between PSCs and their employees seems to be largely attributable to conflicting attitudes to the nature of their relationship. PSCs seem to emphasise the commercial nature of employee relations, stressing that wages are subject to market volatility and ultimately limited by clients' willingness to pay for PSC services.⁶⁸ In contrast, PSC employees regard their work not as a commodity, whose price is subject to the laws of supply and demand and the fickle, often uninformed client opinion, but as a good that has inherent value thanks to their experience, professionalism and risk exposure.⁶⁹ As one CEO of a UK PSC noted: 'I am trying to tell them [PSC employees] not to look at the product. They are not here to create the perfect product. Focus instead on the client's need.'⁷⁰

Conclusion

Section five will return to the notion of "ownership" and PSC employees' self-perception. This section has demonstrated the degree to which PSC and employee interests diverge significantly. Together with fundamentally different attitudes to employee relations in the PSI, this renders compromise more difficult and may provoke escalations in labour relations.

Section Four: Limited Corporate Control and the Costs of Conflict

If PSC employees are not *per se* disposed to and lack the incentives to align their interests with the aim of maximizing corporate profit, to what extent can PSCs pressure their employees to "fall in line"? This section argues that PSCs' ability to enforce corporate goals is severely limited by the labour market and the weakness of their corporate structure.

The Labour Market in the PSI

Many of the aspects of the PSI's labour market that make it inimical to strong corporate control have already been discussed: The combination of temporary employment and high demand renders job loss less threatening. Also, the perceived lack of job security leads employees to invest little into their current positions. Indeed, several contractors have eventually created their own companies or freelanced,⁷¹ suggesting that corporate control by threat of dismissal is not very effective. Nor is such control without costs for PSCs:

⁶⁸ Phillips (2010), Donald (2006).

⁶⁹ Thompson (2011), Shepherd (2008), p. 223.

⁷⁰ Phillips (2010).

⁷¹ Lynch (2011), Edwards (2011), Geddes (2006), p. 137.

Dismissing employees entails costs for sourcing replacements and may result in conflict, as discussed below.

While the PSI's labour market does not encourage strong corporate control, PSCs may actively punish their employees. PSC employees are particularly concerned about being "blackballed", i.e. the spreading of unfavourable information by a disgruntled former employer, which could diminish chances of future employment.⁷² Judging the likelihood of such punishment in purely economic terms is problematic, as individuals are likely to blackball a former employee even if this is irrational because the costs of punishment exceed the original damages.⁷³ However, in the absence of a central database, which could disseminate employee information among PSCs the industry lacks the means for exacting effective punishment. Some PSC representatives supposedly just 'pick up the phone' to discuss a prospective employee with his/her former employer.⁷⁴ Yet, the large number of contractors PSCs employ, the high turnover and time pressure suggest that such a laborious procedure is impracticable for all but key management appointments. Moreover, it appears unlikely that all PSCs keep detailed records of their employees after termination of employment nor that they would be willing to share such information, especially if the company may be held liable for employee misconduct.⁷⁵

Still, PSCs' ability to pressure their employees is arguably not inconsequential. Widespread concerns about "blackballing" suggest that the ease with which an employer can sanction behaviour and employees' perception thereof can differ considerably. Moreover, despite the high demand and flexibility in the PSI's labour market, employees still face costs when switching jobs, e.g. the loss of wages during and the costs of the job search.⁷⁶ Some employees may therefore opt for goal alignment, rather than bear the risk of job loss and possible punishment. Overall, however, the PSI's labour market in Iraq and Afghanistan in 2003-2009 afforded employees a relatively comfortable position that made it unlikely that exerting pressure on employees was an effective means for resolving goal ambiguity.

⁷² Lynch (2011), Loe (2010), Rob Krott in COR (2009 XII), Ashcroft (2006), p. 49, Pelton (2006), p. 82.

⁷³ Carpenter *et al* (2004), p. 415ff, Fehr/Gächter (2002), p. 137ff, Gintis *et al* (2003), p. 153ff.

⁷⁴ Beese (2006), Willis-Fleming (2008), Kroha (2009).

⁷⁵ Claridge (2010), Phillips (2010).

⁷⁶ Douma/Schreuder (2002), p. 96.

The Structure of UK PSCs

PSCs' ability to exert pressure on their employees is predicated on organizational control: PSCs thus need to be able to communicate their goals to their employees, observe their behaviour closely enough to identify problems and effectively address them. This section will argue that, however, PSCs' corporate structures do not provide the necessary organizational control. Unfortunately, Kinsey's 2005 article *Examining the Organizational Structure of UK Private Security Companies* remains the only in-depth analysis of PSCs' organizational structures – confirming once more the notion that the PSC literature to date looks at rather than into PSCs to understand their behaviour.

Kinsey identifies two types of structures in the PSI. First, the 'loosely coupled organic network' (LCON) relies on a Central Management Team (CMT) to oversee its quotidian operations and strategic management (see figure III-2). LCONs are characterized by (1) little differentiation and specialization, (2) a flat hierarchy and (3) a single chain of command (see figure III-1).⁷⁷ According to Kinsey, thanks to concentrated authority in the CMT, LCONs are better able to quickly react to changes in the operational environment. Other benefits include their relatively low cost and the ease with which companies can adopt an LCON structure.⁷⁸ However, the LCON is limited in its ability to accommodate specialization⁷⁹ and struggles when it comes to managing numerous complex operations, as their CMTs either become bottlenecks or, if expanded, lose their organizational coherence.

Figure III-1 Authority Structures within LCONs⁸⁰

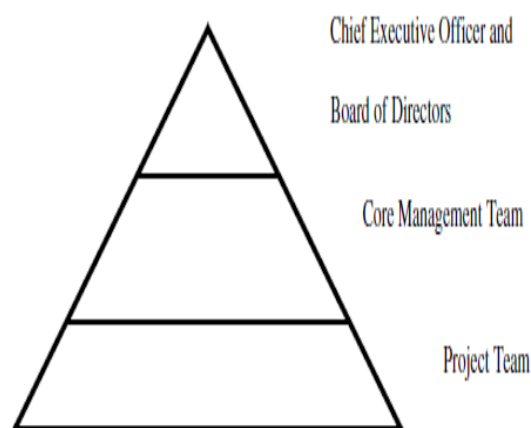
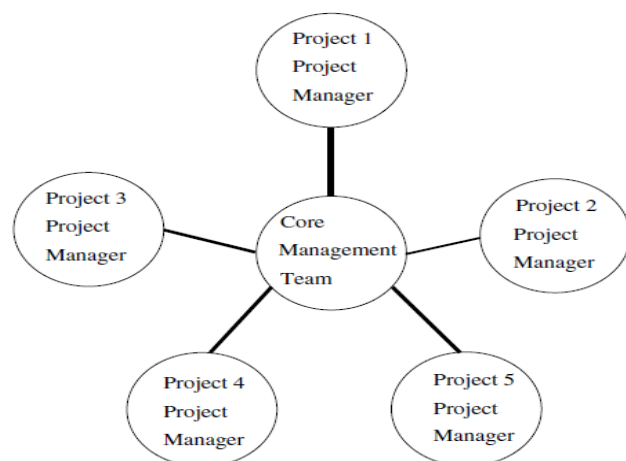


Figure III-2 Organizational Chart of a LCON⁸¹



⁷⁷ Kinsey (2005 II), p. 191.

⁷⁸ Hence, smaller PSCs tend to favour LCONs (Kinsey (2005 II), p. 192).

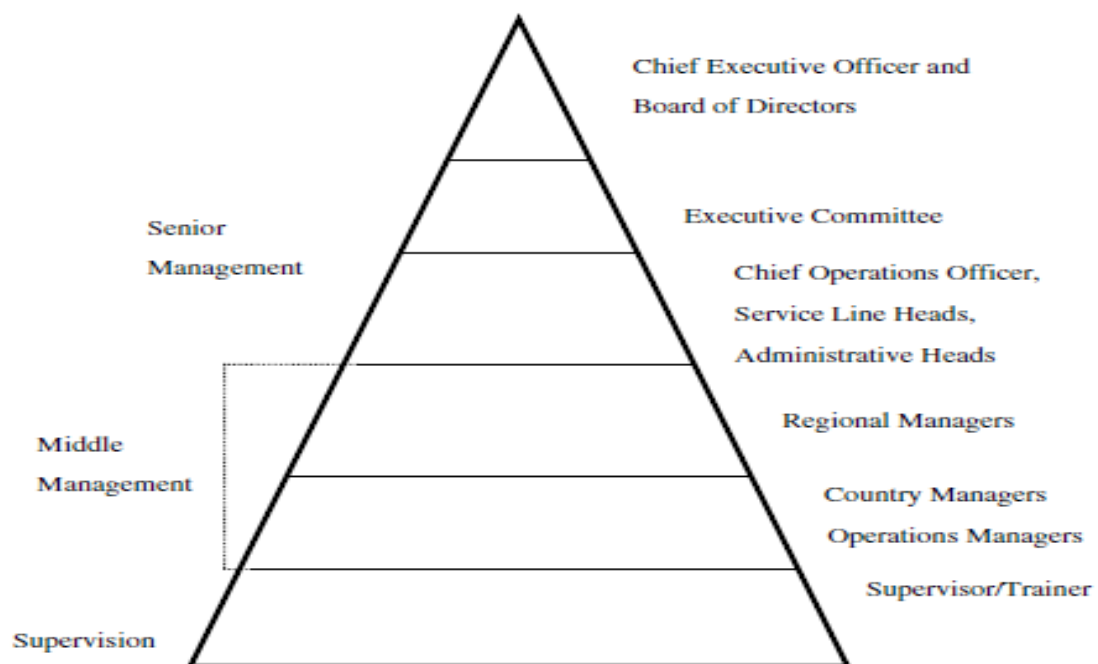
⁷⁹ Kinsey (2005 II), pp. 192-193.

⁸⁰ *Ibid.*, p. 193.

⁸¹ *Ibid.*, p. 192.

As companies grow and diversify, Kinsey argues, PSCs opt for the second type of organizational structure: the 'divisionalised company' (DC).⁸² Here, corporate processes are separated into different divisions along geographic and/or functional lines (see table III-4).⁸³ DCs, unlike LCONs, also separate companies' strategic management from their day-to-day operations.⁸⁴ To accommodate its complex corporate structure, DCs rely on a more complex hierarchy (see table III-3). Kinsey argues that the DC is better able to meet the complex challenges of today when some believe that 'the day of the generalist [...] are [sic] long gone'.⁸⁵ Kinsey acknowledges the DC's longer chain of command and its relative lack of flexibility, but concludes that thanks to the benefits of modern telecommunications its 'hierarchical structure does not appear to place companies at a disadvantage from those PSCs structured around an [LCON]'.⁸⁶

Figure III-3 Authority Structures within DCs⁸⁷



⁸² *Ibid.*, p. 193ff.

⁸³ *Ibid.*, p. 195

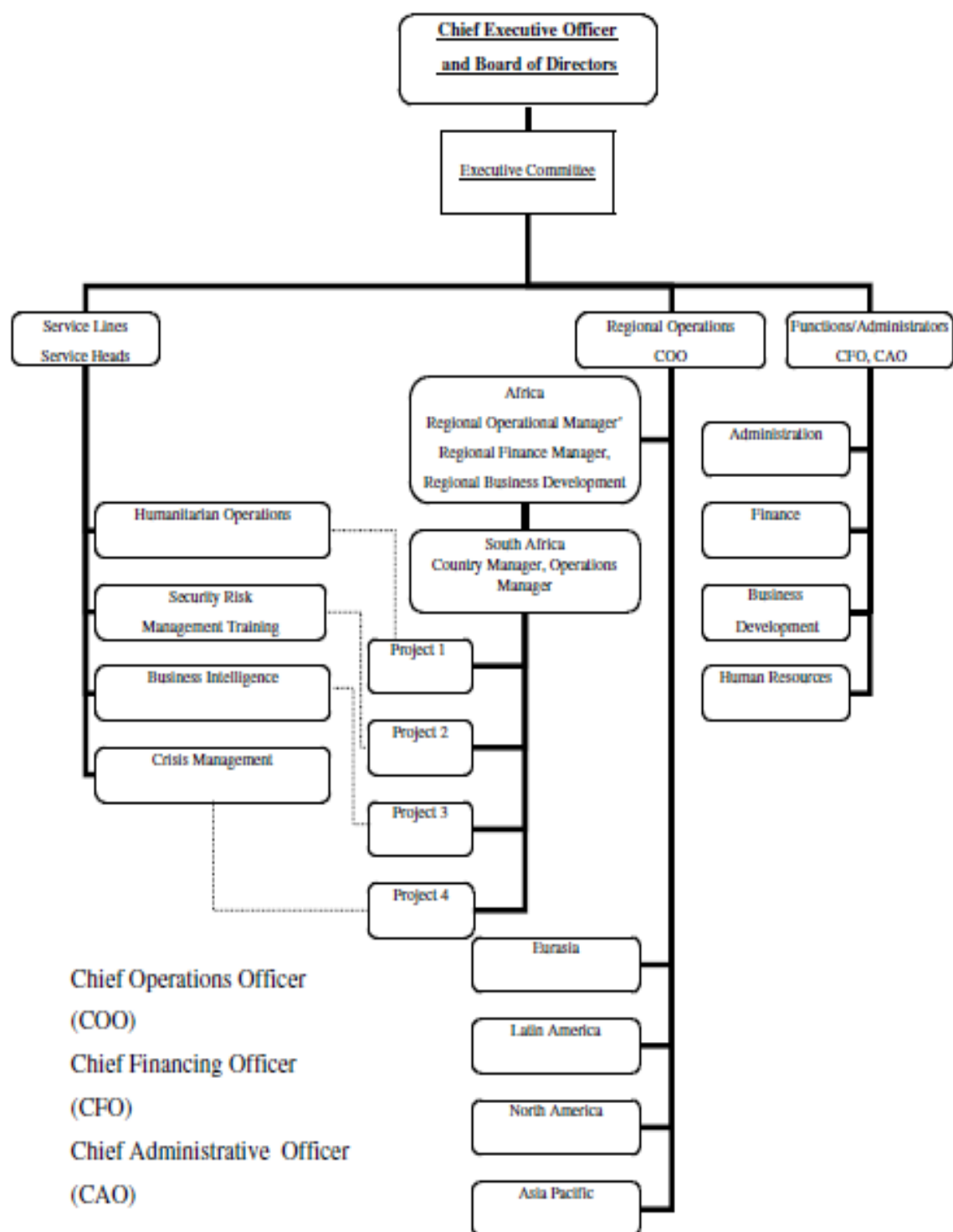
⁸⁴ Compare Kinsey (2005 II), p. 197 and 199.

⁸⁵ Christopher Grose (CRG) in Kinsey (2005 II), p. 200.

⁸⁶ *Ibid.*, p. 210.

⁸⁷ Kinsey (2005 II), p. 193.

Figure III-4 Organizational Chart of a DC⁸⁸



Kinsey's study has weathered the changes that have occurred since its publication in 2005 remarkably well, and LCONs and DCs remain important concepts for understanding the contemporary UK PSI. However, two aspects require critical review due to their particular relevance for assessing PSCs' organizational control. First, Kinsey excludes 'informal

⁸⁸ Kinsey (2005 II), p. 195.

processes' from his analysis.⁸⁹ While a focus on formal organizational structures is not *per se* objectionable, Kinsey does not apply it consistently. Specifically, he argues that the members of CMTs often served together in the military⁹⁰ and that project teams are often 'structured along more military lines', enhancing their organizational coherence.⁹¹ The importance of such informal organizational factors indicates a deficit in the formal organizational structure of PSCs: Employees rely on informal processes because formal organizational guidance is not always readily available.

Interviews with PSC representatives confirm this: Management processes and SOPs were still evolving, in response to the rapid growth PSCs had undergone during the "bubble",⁹² the unexpectedly volatile situation in Iraq and the evolving views on what constitutes appropriate behaviour for private security providers.⁹³ Drivers of change that originated "in-theatre" are particularly interesting, as their direction seemingly runs contrary to Kinsey's expectations. Changes to the RoE, contractual terms or security situation often were not dealt with in a "top-down" manner, i.e. management develops and disseminates SOPs and management processes in response to them, but in a "bottom-up" manner, i.e. acute problems were addressed "on the ground" and the resulting practices were later adopted throughout the company.⁹⁴ In interviews, PSC representatives were eager to stress that management retained ultimate approval, especially if a procedure was adopted company-wide.⁹⁵ However, such *ex post* approval is hardly the immediate control that Kinsey's analysis suggests.

Secondly, Kinsey's assessment of the effectiveness of formal organizational structures and, especially, of the benefits of modern telecommunications seems overly optimistic.⁹⁶ This may be a consequence of the data he relies on for his study: the questionnaires and interviews used are limited to PSCs' senior management,⁹⁷ who are likely to have a more

⁸⁹ Kinsey (2005 II), p. 190.

⁹⁰ *Ibid.*, p. 197.

⁹¹ *Ibid.*, p. 198. Schaub/Franke make a similar point by noting the 'cadre structure' of many PSCs (Schaub/Franke (2009), p. 93).

⁹² Toyne-Sewell (2011), Beese (2011).

⁹³ Worcester (2009), Priestley (2009), Willcocks (2008).

⁹⁴ Donald (2006), Higgins (2011), Edwards (2011).

⁹⁵ Beese (2011), Phillips (2010), Thompson (2011).

⁹⁶ Kinsey (2005 II), p. 210.

⁹⁷ *Ibid.*, pp. 210-212.

optimistic assessment of the control afforded by formal organizational structures.⁹⁸ Employees in mid-management and working-level positions stationed “in-theatre”, who are subject to such controls, are omitted. In interviews, they provide a significantly more negative assessment of formal organizational structures⁹⁹ suggesting that, while the number and scope of management processes has increased, this has not significantly improved corporate control.¹⁰⁰ Indeed, PSC employees seem to experience these processes as a nuisance and often regard these measures as a cover for management if something should go awry.¹⁰¹ Said interviews also suggest that information is heavily “filtered” before being passed up the chain of command,¹⁰² which suggests that senior management overestimates the benefits of standardized management processes and modern telecommunications for organizational control. Finally, it is questionable whether more information alone necessarily increases corporate control, as many PSCs still dedicate few resources to oversight and accountability.¹⁰³

Conclusion

It is therefore questionable whether UK PSCs possess the necessary level of organizational control to enforce goal alignment by employees. Moreover, such actions are hardly compatible with the need for delegation of PSC decision-making down the chain of command. Kinsey attributes this need to ‘the technical nature of the work and its location’,¹⁰⁴ but the lack of formal organizational guidance is arguably an even more salient factor. In any case, PSCs can hardly afford to threaten their employees at the same time as they confer substantial decision-making authority upon them. Kinsey implicitly acknowledges these limits by noting the prevalence of flat hierarchies in the PSI¹⁰⁵ - a sentiment that was echoed in the interviews with PSCs and their employees conducted for this thesis.¹⁰⁶

⁹⁸ *Ibid.*, p. 191, Beese (2006), Kroha (2009).

⁹⁹ Edwards (2011), Lynch (2011), Thompson (2011).

¹⁰⁰ Lynch (2011), Edwards (2011).

¹⁰¹ Lynch (2011), Edwards (2011), Loe (2010).

¹⁰² Several PSC employees made this point, but asked for it not to be attributed to them.

¹⁰³ Phillips (2010), Claridge (2010), Beese (2011).

¹⁰⁴ Kinsey (2005 II), p. 203.

¹⁰⁵ *Ibid.*, p. 188.

¹⁰⁶ In particular, see Lynch (2010), Toyne-Sewell (2011), Loe (2010).

Conclusion Part I: The Costs of Conflict

Focussing on their respective economic interests, part one has shown that PSCs' interests diverge significantly from those of their employees – a divergence, which neither incentive structures nor the use of corporate pressure can fully reconcile. This implies a potential for friction within PSCs understood as “coalitions of participants”, which poses a problem for PSCs and their employees alike: When employee relations deteriorate, the damage for both parties is potentially considerable.

A breakdown in a PSC's service provision due to poor labour relations would negatively affect the client's security and provoke a significant negative reputational impact on the PSC's business. Labour conflict can be costly for PSCs even if an escalation to a strike or mass resignations can be avoided. Highly qualified PSC employees often have significant client exposure, which they can use to the detriment of their employer. Indeed, *DynCorp* allegedly lost its contract for providing security for Afghan President Hamid Karzai after complaints by its employees.¹⁰⁷

Yet, conflictive labour relations are also expensive for PSC employees. Most PSC employees have not accrued a full pension through their military service and their career earnings prior to entering the PSI usually did not allow them to build up a substantial financial “cushion”.¹⁰⁸ They are therefore dependent on their income not only to sustain themselves and their families, but also to address their pension shortfall. Furthermore, the skills that are sought after in the PSI, e.g. extensive combat experience in SOF units, have few applications in the civilian world.¹⁰⁹ Highly-qualified employees therefore have little hope to command a comparable salary outside the PSI.

Since the costs of labour conflict are high for PSCs and their employees, incentives to compromise are strong. Yet, acknowledging the possibility of a shared corporate interest to emerge thanks to said incentives by no means amounts to whole-hearted support for the PSC literature's absolutist notion of a single, coherent corporate interest. Instead, the divergent interests of PSCs and their employees offer customers and regulators a point of departure to influence PSC behaviour, e.g. by playing off PSCs against their employees and

¹⁰⁷ Pelton (2006), p. 75ff.

¹⁰⁸ Higgins (2011), Edwards (2011), Thompson (2011), Lynch (2011).

¹⁰⁹ Studies suggest that UK veterans with significant combat experience struggle most to reintegrate into the civilian labour force (Prigerson *et al* (2001), p. 99ff, Iversen *et al* (2005), p. 175).

vice versa. Indeed, this chapter's and the thesis' overall conclusion will return to this point and analyse how these divergent interests can be utilized to influence PSC behaviour as well as the likely limits of such an approach.¹¹⁰

Part II: Professionalism in the PSI

While their economic underpinnings indicate a high propensity for conflict, to date, labour relations in the PSI have rarely escalated to that level. Interviews confirm this: While PSC employees describe the relationship to their employer at best as 'business-like'¹¹¹ and 'professional'¹¹² and at worst as 'extremely offensive'¹¹³ or careless,¹¹⁴ they rejected strikes and mass resignations as 'unprofessional'.¹¹⁵ The prevalent sentiment seems to be that one may switch companies, but only after serving out one's contract in a professional manner – even if employers and clients lack a similar level of professionalism.¹¹⁶ Part two of this chapter will argue that it is thanks to the social context that conflicts have largely been averted. Specifically, the sense of professionalism expressed above plays an important role in fostering cooperation in the PSI.

Section Five: Conflicting Views about Professionalism in the PSI

Professionalism has so far received relatively little attention in the PSC literature.¹¹⁷ If at all, it features in discussions about how security privatization threatens professionalism in the state-organized military¹¹⁸ or about the problems associated with a lack of professionalism in the private provision of armed security.¹¹⁹ Professionalism in the PSI has yet to be thoroughly analysed, presumably, because PSCs are generally assumed to be exclusively motivated by financial interests, leaving little room for other concerns.¹²⁰

¹¹⁰ See Conclusion Section 4.

¹¹¹ Smith (2006).

¹¹² Edwards (2011).

¹¹³ Higgins (2011).

¹¹⁴ Lynch (2011).

¹¹⁵ Edwards (2011), Higgins (2011), Lynch (2011), Thompson (2011).

¹¹⁶ Ashcroft (2006), p. 57, Low (2007), p. 200ff, Shepherd (2008), p. 223.

¹¹⁷ Higate (2011), p. 324.

¹¹⁸ See, for example, Isenberg (2000) III, p. 21, Singer (2007 V), Dunigan (2011), p. 39ff.

¹¹⁹ Higate (2011), p. 322, Franke/von Boemcken (2011), p. 726, Singer (2007 II), p. 5.

¹²⁰ Franke/von Boemcken (2011), p. 728.

PSC Employees' Self-Perception

The available data on motivation in the PSI, however, fail to support the literature's assumptions. Franke/von Boemcken showed that only 25% of respondents considered the relatively higher wages in the PSI an important factor in their motivation, while non-financial motives like helping others (64.6%), making a difference (38.0%) and serving their country (31.3%) were each more important.¹²¹ Moreover, 96% of respondents considered their work as security contractors as a calling.¹²² Paul Higate's analysis of UK PSC employees' memoirs likewise identified 'nationality and professionalism' as important recurring themes.¹²³

Caution seems appropriate when drawing conclusions from the aforementioned studies for this thesis. Franke/von Boemcken's survey is based on US rather than UK contractors, with a background in law enforcement, not the military,¹²⁴ while Higate's analysis draws on a sample of only five memoirs of UK PSC contractors,¹²⁵ which suffer from genre-specific constraints, such as self-censorship, editorial influence and self-aggrandisement.¹²⁶ Still, key aspects of the aforementioned studies are confirmed by interviews and journalistic accounts: Contractors frequently expressed their distaste at being associated with financial motives and stress their commitment to professionalism.¹²⁷ Critics, however, may contend that PSCs have a vested interest to (over-)emphasise their professionalism to 'provide a counter-narrative to [...] the archetypal mercenary figure'.¹²⁸ Professions are also 'singled out for public prestige and official privilege in the marketplace',¹²⁹ making it desirable for PSCs to attach that label to themselves. Indeed, when asked how they advertise their services, PSC representatives identified their professionalism as their main selling point.¹³⁰

This schism between the literature's prevalent view on professionalism and PSC employees' self-perception raises two questions: (1) why do views on professionalism in the PSI diverge so dramatically and (2) are PSCs' claims about their professionalism merited?

¹²¹ *Ibid.*, pp. 735-736.

¹²² *Ibid.*, p. 732.

¹²³ Higate (2011), pp. 330-332.

¹²⁴ Franke/von Boemcken (2011), p. 737. Still, 61.5% of respondents claimed previous military experience (*Ibid.*, p. 730).

¹²⁵ Higate (2011), pp. 327-328.

¹²⁶ *Ibid.*, p. 327.

¹²⁷ Higgins (2011), Lynch (2010), Edwards (2011), Smith (2005).

¹²⁸ Higate (2011), p. 340.

¹²⁹ Freidson (2001), p. 13. See also Burk (2002), p. 39.

¹³⁰ Claridge (2010), Worcester (2009), Beese (2006), Drake (2011).

Problems with the PSC Literature's View of Professionalism

Three arguments can be found for why the literature rejects the notion of professionalism in the PSI, two of which are due to its reliance on Huntingtonian notions of military professionalism.

First, influenced by Samuel Huntington's seminal work *The Soldier and the State*, the literature focuses on the submission of the military to its civilian leadership as the keystone to professionalism.¹³¹ *Prima facie*, the commodification of armed security through PSCs violates this principle, as individual contractors also owe loyalty to their employer.¹³² Worse still, PSCs may work for a client other than their home-state, causing PSCs to 'fall outside of the military profession'.¹³³ This critique overlooks that neither all members of the US nor the UK military serve their home-state. In 2007, 30,000 non-citizens served on active duty in the US military and a further 11,000 in the reserves,¹³⁴ while 6.7% of new recruits to the British Army came from Commonwealth countries – a figure due to increase to 10% by 2020.¹³⁵ Moreover, while state-organized militaries may require the absolute and exclusive control envisioned by Huntington, the same requirement seems excessive with respect to PSCs. PSCs operate conjunctly with other security actors in Iraq and Afghanistan in comparison to whom their strategic impact is relatively low¹³⁶ and, unlike the US military, a PSC whose loyalty has come under question can easily be substituted.

Secondly, Huntington argues that the military professional is not primarily motivated by economic incentives, but by 'a technical love for his craft and the sense of social obligation'.¹³⁷ Critics apply this argument to the PSI by claiming that the financial interests of PSCs and their employees displace more altruistic values, resulting in a more aggressive stance and, ultimately, an excessive use of force.¹³⁸ Unfortunately, the literature does not elaborate on why a more aggressive stance would be financially beneficial. Indeed, the literature's assertions appear questionable, given that an aggressive stance would require more expensive equipment, such as armoured vehicles, and make its loss more likely.

¹³¹ Huntington (1957), p. 14. See Schaub/Franke (2010), p. 91, Singer (2003), p. 191ff.

¹³² Schaub/Franke (2009), pp. 91-92.

¹³³ Singer (2003), p. 41.

¹³⁴ Economist (2007).

¹³⁵ Norton-Taylor (2008).

¹³⁶ See also Chapter 2, Section 2.

¹³⁷ Huntington (1957), p. 15.

¹³⁸ Higate (2011), p. 322.

Moreover, it is questionable if soldiers in the state-organized military are as indifferent to financial incentives as the above criticism implies. Recent empirical data by Woodruff, Kelty and Segal shows not only that financial interests play an important role in soldiers' motivation, but also that a certain level of financial motivation seems to be compatible with military professionalism.¹³⁹ PSCs and their employees are therefore held to a motivational standard that even the state-organized military struggles to fulfil.

Finally, a more substantial critique is expressed by Franke, Schaub and von Boemcken (FSvB). They argue that professionalism is strong in the military, because its members are 'indoctrinated' through 'common experiences in training, education, and practice' and because it has a strong 'command structure that controls entry into the profession [and] establishes policies and standards'.¹⁴⁰ PSCs not only lack these institutional prerequisites for a strong 'professional, corporate identity',¹⁴¹ but the 'highly fragmented nature of the industry',¹⁴² the 'diversity of firms, clients, and the eligible labor pool',¹⁴³ and the 'short-cycle deployment rotations',¹⁴⁴ prevents its development in the PSI. This critique challenges earlier claims about the central role of professionalism in PSI labour relations – so much so that the next section will discuss it in greater detail.

Section Six: Defining Professionalism

FSvB essentially argue that there is a set of characteristics that distinguishes professions from other occupations, which is absent in the PSI. Their approach to professionalism in the PSI differs distinctly from the rest of the PSC literature insofar as it draws explicitly on the broader study of professions. Unfortunately, FSvB make little use of the insights said literature has to offer,¹⁴⁵ as even a cursory foray – this thesis will focus on works by Andrew Abbott and Eliot Freidson – reveals weaknesses in their argument. In their defence, one ought to note that the two works in which FSvB develop their critique are, first and foremost, empirical surveys and that their discussion of professionalism is merely a tentative

¹³⁹ Woodruff *et al* (2006), p. 363. See also Moskos (1977), Moskos/Wood (1988), Moskos/Segal (2000).

¹⁴⁰ Schaub/Franke (2009), pp. 92-93.

¹⁴¹ *Ibid.*, p. 93, Franke/von Boemcken (2011), p. 738.

¹⁴² *Ibid.*, p. 738.

¹⁴³ Schaub/Franke (2009), p. 93.

¹⁴⁴ Franke/von Boemcken (2011), p. 738.

¹⁴⁵ Franke/Schaub cite Abbott (1988), but do not engage with his conception of professionalism (Schaub/Franke (2009) pp. 89-90).

attempt to make sense of the resulting data. The following discussion will flesh out FSvB's critique and set it in the broader context of the literature on professions.

The Varied and Dynamic Nature of Professionalism

FSvB identify specific characteristics in the military's organizational structure that they determine to be constitutive for its professionalism and note their absence in the PSI as evidence for its lack of professionalism.¹⁴⁶ This approach presupposes the existence of a definitive set of specific institutional characteristics whose presence unequivocally determines whether an occupation is a profession. Most scholars of professionalism would likely reject this notion. Instead, Freidson suggests conceptualizing professionalism as a 'logic', distinct from market-based and bureaucratic control, that, crucially with respect to FSvB's argument, can manifest itself in various forms.¹⁴⁷ Abbott makes a similar point when he notes the 'empirical diversity' of professions¹⁴⁸ and criticises a 'test-by-example' approach.¹⁴⁹

Why the notion of a definitive set of specific institutional characteristics is so problematic becomes apparent once it is applied to other professions. FSvB argue that PSC employees lack the military's 'enforced conformity in all aspects of life [...] over an extended period of time'.¹⁵⁰ This criterion not only finds the PSI to be wanting, but would also disqualify some of the 'original "status professions"', notably law, medicine and university education.¹⁵¹ The notion of a definitive set of specific characteristics also poses a problem with respect to the historical experience of professions. Rather than static and immutable, Abbott specifically stresses the dynamic nature of professions.¹⁵² Defining professionalism as a definitive set of specific institutional characteristics is too narrow a corset to accommodate historical changes experienced as professions adapted to new social and political realities. This is echoed by Burk in his seminal article *Expertise, Jurisdiction, and Legitimacy of the Military Profession*.¹⁵³

¹⁴⁶ See *Ibid.*, pp. 92-94, Franke/von Boemcken (2011), pp. 738-739.

¹⁴⁷ Freidson (2001), p. 2.

¹⁴⁸ Abbott (1988), pp. 3-4.

¹⁴⁹ *Ibid.*, pp. 8-9.

¹⁵⁰ Franke/von Boemcken (2011), p. 738, Schaub/Franke (2009), p. 93.

¹⁵¹ Freidson (2001), p. 21.

¹⁵² Abbott (2002), p. 524. See also Freidson (1984), p. 4ff.

¹⁵³ *Ibid.*, pp. 39-40. On the importance of Burk, see Forster (2012), pp. 283-284.

A Broader, More Nuanced Approach to Professionalism

Instead, professions and professionalization are defined in more abstract terms to account for their varied and dynamic nature. Freidson, for example, argues that '[p]rofessionalism may be said to exist when an organized occupation gains the power to determine who is qualified to perform a defined set of tasks, to prevent all others from performing that work, and to control the criteria by which to evaluate performance',¹⁵⁴ while Abbott defines professions even more abstractly as 'exclusive occupational groups applying somewhat abstract knowledge to particular cases'.¹⁵⁵ Moreover, professions and occupations are not divided by a clear-cut boundary, but are ideal types that mark polar opposites on a continuum.¹⁵⁶ This suggests that the question whether the PSI is a profession may be too narrow and yield distorted results, especially if compared against an idealized notion of military professionalism. A more fruitful approach may be to ask to what degree the PSI can be a profession. Finally, Freidson and Abbott stress an important point that FSvB's critique omits: Occupations become professions neither just because of their "training", "education", "practice" or "command structure", i.e. their **structural characteristics**, nor because of their **functional characteristics**, which Huntingtonian notions of military professionalism emphasise in the military's unique ability in the 'management of violence'.¹⁵⁷ Instead, professionalism is socially constructed and, as a result, **cultural** and **monopolistic characteristics** of professionalism, i.e. a profession's members seeing themselves as such and being accepted by society, are at least as important.¹⁵⁸ Indeed, influenced by Abbott's definition of professionalism, which emphasises professional knowledge and jurisdiction,¹⁵⁹ Burk argues that 'expertise, jurisdiction and legitimacy' are the defining characteristics of military professionalism.¹⁶⁰

Despite the critical tenor of the paragraphs above, this sojourn into the literature on professionalism is not meant to imply that FSvB's critique is without merit. Instead, the benefits of the proposed approach are most starkly evident in the support it lends to FSvB's otherwise somewhat quixotic conclusions. While they maintain that the PSI lacks the

¹⁵⁴ Freidson (2001), p. 12.

¹⁵⁵ Abbott (1988), p. 8.

¹⁵⁶ Freidson (2001), pp. 127-128. See also Etzioni (1969), p. viii.

¹⁵⁷ Huntington (1957), p. 12ff.

¹⁵⁸ Abbott (1988), p. 15.

¹⁵⁹ *Ibid.*, pp. 33-34.

¹⁶⁰ Burk (2002), pp. 43-44.

institutional pre-requisites to form a strong professional identity, they also note that '[c]ivilian contractors have many of the traits of military professionals'¹⁶¹ and that their survey data indicates 'a desire for the development and recognition of a professional identity in the security industry'.¹⁶² FSvB conclude that PSC employees should be 'considered to be members of a semi-profession', whose 'continued professionalization is possible and should be encouraged'.¹⁶³ Unfortunately, FSvB remain vague on how their conclusion is compatible with their own concerns about PSI professionalism, let alone with the PSC literature's prevalent scepticism. Their more nuanced view of professionalism, however, allows for the existence of semi-professions and explains how the PSI could attain said status by emphasising its structural as well as functional, cultural and monopolist characteristics.

The following discussion of professionalism in the PSI will proceed in steps, successively drawing on different aspects of the concept. Sections seven and eight will discuss whether the PSI sports the characteristics associated with professionalism, which FSvB dispute. It will use, what Abbott describes as, a 'synthetic professionalization concept', i.e. a concept that combines structural, functional, monopolist and cultural approaches to professionalism.¹⁶⁴ However, by emphasising "jurisdiction" and "legitimacy" respectively, Abbott and Burk go beyond this "synthetic" model and also emphasise professionalism's socially constructed nature. Sections seven and eight discuss the steps PSCs take to gain recognition for their claim to professionalism. Section nine explores the interactive character of professionalism at the heart of Burk's and Abbott's conceptualization and highlights differences between their respective approaches and the consequences for the emerging understanding of professionalism in the PSI.

¹⁶¹ Schaub/Franke (2009), p. 93.

¹⁶² *Ibid.*, p. 101. Franke/von Boemcken (2011), p. 738.

¹⁶³ Schaub/Franke (2009), p. 102. See also Franke/von Boemcken (2011), pp. 738-739.

¹⁶⁴ Abbott (1988), p. 16.

Section Seven: A Genuine Private Security Professionalism? I

FSvB insist that the PSI is distinct from military professionalism, as '[i]ncorporating contractors into the military profession would dilute its corporate identity'.¹⁶⁵ Leaving aside whether this concern is justified, section seven and eight will argue that, a genuine PSI professionalism is at best still evolving. A stronger claim can be made regarding professionalism in the PSI as an extension of military professionalism, which, as such, exerts considerable influence on PSC behaviour.

Structural Characteristics of Professionalism in the PSI

There are various ways to define the structural characteristics of professionalism. Freidson, for example, argues that the logic of professionalism has structural implications for, among others, its knowledge, specialization, labour market, training.¹⁶⁶ Using this approach to identifying professions would likely produce inconclusive results, as any occupation would exhibit some and none all of the numerous structural aspects of professionalism. Instead, this section asks whether the PSI has developed institutions that would support its claim to professionalism.¹⁶⁷ Indeed, the industry created **professional associations**,¹⁶⁸ developed **ethics codes**¹⁶⁹ and, in the UK, some PSC training courses are **certified by the SIA**.¹⁷⁰ The PSI also engaged in national and international efforts to create **licensing legislation**¹⁷¹ and assisted in the development of **university-based professional education**.¹⁷² Hence, an absence of "training", "education", "practice" and a "common command structure" cannot be categorically attested.

It is further unclear why the structural characteristics FSvB identify should bar the PSI from attaining the status of a profession. FSvB rightly note a 'multitude of firms' and a 'heterogeneous labour pool' in the PSI,¹⁷³ but there are hardly fewer law firms in the legal profession or a less diverse labour pool in journalism. Likewise, while Freidson argues that

¹⁶⁵ Schaub/Franke (2009), p. 102.

¹⁶⁶ Freidson (2001), p. 34, 60, 82, 93.

¹⁶⁷ Terence Johnson described and criticised this approach as a 'trait model' of professionalism (Johnson (1972), p. 23ff).

¹⁶⁸ IPOA even publishes a journal (Doug Brooks in COR (2009 II)).

¹⁶⁹ Brooks (2006), Bearpark (2006).

¹⁷⁰ Geddes (2006), p. 184, Shepherd (2008), p. 256.

¹⁷¹ Phillips (2010), Willis-Fleming (2009).

¹⁷² Examples include the Campus University Vienna (Kroha (2009)) and the University of Aberdeen (Drake (2011)).

¹⁷³ Franke/von Boemcken (2011), p. 738. See also Schaub/Franke (2009), p. 93.

‘jobs whose very existence may be fleeting [...] can develop no coherent identity’,¹⁷⁴ the prevalence of temporary employment need not prevent the PSI from professionalizing. After all, the professional identity of doctors, lawyers and journalists does not rely on the specific hospital, law-firm or newspaper they work for but on operating within their respective profession.¹⁷⁵ While contractors enter the PSI as a second career, most still spend significant time in it: The respondents to Franke/von Boemcken’s survey, for example, spent on average 4.7 years in the PSI.¹⁷⁶ Categorically denying the possibility that the PSI could form a professional identity thus seems somewhat arbitrary, given that the average career in the US military lasts less than ten years.¹⁷⁷ Closer inspection, admittedly, reveals weaknesses in the structures of PSI professionalism. Crucially, the enforcement of its ethic codes, their operationalization by PSCs and the consequences of violations remain largely unclear.¹⁷⁸ Yet, as Alexander Carr-Saunders notes, the attempt to form professional structures is more important than its success,¹⁷⁹ and UK PSCs are clearly trying to professionalise.

FSvB are, however, not interested in “training”, “education” and “practice” *per se*, but in their contribution to allowing the military to form a strong professional identity.¹⁸⁰ Abbott and Burk likewise stress the importance of professional education in establishing an expertise/professional knowledge.¹⁸¹ Professional education in the PSI is too limited in its duration and participation to constitute a formative period as envisioned by FSvB, and the PSI lacks the lengthy apprenticeships that professions without a dedicated educational pathway to membership use, such as journalism. It is in fulfilling this function, therefore, that genuine PSI professionalism falls short. However, the UK PSI is also suffused with the structures of military professionalism and, when it comes to their formative period, interviewees highlight their shared time in military education and training and their operational experience.¹⁸² Military training and operational experience also regulate entry into the PSI, as job adverts generally specify a minimum rank and period of operational

¹⁷⁴ Freidson (2001), p. 47.

¹⁷⁵ Abbott (2005), p. 323.

¹⁷⁶ Franke/von Boemcken (2011), p. 730.

¹⁷⁷ Segal/Segal (2004), p. 10.

¹⁷⁸ Amnesty International USA (2009).

¹⁷⁹ Carr-Saunders (1928), p. 7.

¹⁸⁰ Schaub/Franke (2009), pp. 92-93.

¹⁸¹ Burk (2002), p. 49, Abbott (1988), pp. 52-55. On the importance of professional knowledge, see also Carr-Saunders (1933), p. 365ff, Johnson (1972), p. 23, Freidson (2001), p. 17ff.

¹⁸² Smith (2006), Lynch (2010), Higgins (2011), Thompson (2011). See also Shepherd (2008), pp. 128-129, Ashcroft (2006) pp. 41-42, Low (2007), pp. 281-282.

experience as conditions for application.¹⁸³ Crucially, the structures of military professionalism are not limited to PSC employees' previous career. Processes learnt in the military are ubiquitous in the quotidian work of PSCs. Their employees frequently rely on their military training to understand and develop *ad hoc* solutions to problems,¹⁸⁴ which often become formalized. Hence, one PSC employee stated: 'Our SOPs are carried over from the military [...] directly out of the manual'.¹⁸⁵

Functional Characteristics of Professionalism in the PSI

Functionalists argue that professions form in response to the need to govern an 'otherwise asymmetric expert-client relationship'.¹⁸⁶ Huntington proposes such a functional rationale for military professionalism: Democratic societies need the security an effective military provides and, to be effective, those tasked with the "management of violence" require autonomy.¹⁸⁷ This 'functional imperative' chafes against the 'societal imperative' of the primacy of the civilian leadership and the norms and values of liberal democracies.¹⁸⁸ To contain the risk the military poses to society while preserving its effectiveness, it needs to be separate from, but under the absolute and exclusive control of the civilian leadership.¹⁸⁹ Earlier, this chapter argued that Huntington's theory is a poor fit for the PSI: While PSCs also present an "asymmetric expert-client relationship", their limited strategic impact and their clients' ability to replace them at will reduces the risk they pose to society. This argument has so far relied on structural reasons, i.e. the limited capabilities of PSCs,¹⁹⁰ but there are also functional reasons supporting this argument: The need for control is a consequence of the specific function the military provides. If PSCs provide an altogether different function, this should lessen the need for control.

Functional Imperative

In interviews, PSC representatives stressed their unwillingness and inability to provide military functions, i.e. offensive combat services.¹⁹¹ This is not just a matter of capability

¹⁸³ Thompson (2011), Lynch (2011).

¹⁸⁴ See section 4.

¹⁸⁵ Edwards (2011). See also Higgins (2011), Geddes (2006), p. 46.

¹⁸⁶ Abbott (1988), p. 15. See also Parsons (1949), p. 185ff.

¹⁸⁷ For a more detailed discussion, see Huntington (1957), Finer (2002), Feaver (2003), pp. 16-38, Owens (2011), p. 12ff).

¹⁸⁸ Feaver (2003), p. 16ff, Owens (2011), p. 12ff.

¹⁸⁹ Huntington (1957), pp. 83-85.

¹⁹⁰ See Chapter 2, Section 2.

¹⁹¹ Worcester (2005), Beese (2006), Donald (2006) Anonymous 01 (2008), Anonymous 02 (2008), Thompson (2008), Claridge (2010), Phillips (2010), Clissitt (2010), Thompson (2011).

constraints: Michael Hutchinson of *Erinys* emphasised that its *Oil Protection Force* of 16,000 guards could not have functioned without CF support.¹⁹² Instead, PSC representatives argue that there is no viable business model for the private provision of military functions.¹⁹³ The PSI “works” as a business, because it caters to a large and diverse group of private and public sector customers, while a legitimate purveyor of military functions would be limited to a small group of public sector clients. There would also be little demand for offensive combat services outside the infrequently occurring expeditionary operations, and their provision requires more expensive training and equipment. This combination of high costs, few customers and volatile demand causes the business risk of the private provision of military functions to be prohibitively high. Indeed, *Sandline’s* and *EO’s* corporate histories arguably support this assessment. Both companies emerged when military equipment and man-power was relatively inexpensive. The security environment at the end of the Cold War also generated demand for private military services and, more importantly, an expectation for said demand to become sustainable. As these hopes failed to materialize and competition from PSCs increased their man-power costs, *EO* and then *Sandline* went out of business.

Societal Imperative

Providing a different function than the military, however, does not absolve PSCs entirely from an expectation of societal control. Indeed, FSvB combine this need for social control with the vocational nature of military service in the term legitimacy,¹⁹⁴ which also features prominently in Burk’s definition of military professionalism.¹⁹⁵ While the function of PSCs may differ from the military’s “management of violence”, their quotidian work relies on the use of force and thus requires a level of legitimacy comparable to the state-organized military. While this chapter will discuss *en détail* whether the term legitimacy is as usefully applied to PSCs as to military professionalism,¹⁹⁶ interviews and memoirs strongly suggest that PSCs are eager to embrace this expectation of social control.¹⁹⁷ Critics may reject such claims as lip-service. Indeed, there is a dearth of formal processes through which UK PSCs

¹⁹² Hutchings (2006), *Erinys* (2005), p. iii.

¹⁹³ This discussion draws on Worcester (2009), Kroha (2009), Priestley (2009), Ashwell (2008), Toyne-Sewell (2011).

¹⁹⁴ Schaub/Franke (2009), p. 91ff.

¹⁹⁵ Burk (2002), pp. 43-44.

¹⁹⁶ See conclusion part II.

¹⁹⁷ The notion of a broader responsibility featured in all interviews with PSC representatives/employees. See also Ashcroft (2006), p. 156, Shepherd (2008), p. 324, Pelton (2006), p. 147.

could coordinate their activities with, for example, the FCO.¹⁹⁸ While several interviewees pointed to informal lines of communication,¹⁹⁹ experiences with such arrangements during the *Arms to Africa Affair* are hardly encouraging: Local contacts lacked the necessary authority to approve *Sandlines'* activities, information flow to the FCO was slow and the process was prone to misunderstandings.²⁰⁰ However, the lack of formal coordination and the deficits of informal coordination should not be mistaken for a lack of responsibility. Instead, PSCs stress that they would welcome more formal coordination mechanisms²⁰¹ and interviews tell of several instances when PSCs lent support to military and CPA personnel²⁰² or declined business after consulting with the FCO.²⁰³ Combined with the monopolist and cultural characteristics of professionalism, which will be discussed in the next section, this behaviour, the distinction PSCs draw between their function and that of the military and their acceptance of a broader societal responsibility are indicative of PSI professionalism.

Conclusion

The PSI's willingness to adopt a broader societal responsibility and the structural developments within the industry indicate a desire to professionalize. Yet, its lack of a formative period and of processes through which PSCs could coordinate suggest that a strong, genuine PSI professionalism has yet to develop. When PSI professionalism is viewed as a continuation of military professionalism, however, the military training and operational experience many PSC employees share accounts for their formative period and explain their strong sense of responsibility.

¹⁹⁸ Reed (2010).

¹⁹⁹ Beese (2011), Phillips (2010), Lewry (2009).

²⁰⁰ Jones (1998), Kinsey (2006), p. 72ff.

²⁰¹ Bearpark (2006), Westropp (2005), Willcocks (2008).

²⁰² Gray (2005), Worcester (2009), Curtis (2007), Ashcroft (2006), p. 197.

²⁰³ Willis-Fleming (2009), Phillips (2010), Isaacs (2010).

Section Eight: A Genuine Private Security Professionalism? II

Having discussed the structural and functional characteristics of PSI professionalism, this section focuses on its monopolist and cultural aspects, specifically on the steps PSCs take to gain recognition for their professionalism.

Monopolist Characteristics of Professionalism in the PSI

While structuralists, functionalists and the literature on military professionalism focus on the beneficial nature of professionalism,²⁰⁴ monopolist approaches take a less sanguine view. Johnson, for example, argues that professions aim to maintain their dominance in client relations,²⁰⁵ while Freidson notes their desire for autonomy²⁰⁶ and Berlant points to the establishment of an economic monopoly.²⁰⁷ Applied to the PSI, this means that PSCs' success in establishing a monopoly and autonomy depends on whether they can convince society that their claim is merited.²⁰⁸

Monopoly: Professions establish a monopoly by 'construct[ing] tasks into [...] "professional problems"' and by regulating who may legitimately work on these problems.²⁰⁹ To demarcate their professional expertise, UK companies early on rejected the then-prevalent term PMC in favour of PSC to distinguish themselves not just from *EO* and *Sandline*, but also from US companies like *Blackwater*.²¹⁰ Indeed, when authors started to describe US companies as PSCs, some UK companies re-christened themselves as risk consultancies.²¹¹ According to Caplow, such name changes are characteristic for emerging professions trying to 'lose their past, [and] assert their monopoly'.²¹² To substantiate their claim, UK PSCs established a distinct 'professional practice', a specific system of 'diagnosis, treatment, and inference'.²¹³ Unlike their US counterparts, UK PSCs emphasise the analytical aspects of their services provision, which they attribute to their better qualified staff: 'It is the thick ones among my staff that just have a PhD. The smart ones can list you their languages like other

²⁰⁴ Burk (2002), p. 39.

²⁰⁵ Johnson (1972), p. 41.

²⁰⁶ Freidson (2001), p. 17ff.

²⁰⁷ Berlant (1975), p. 43ff.

²⁰⁸ Client relations are discussed in Chapter 5.

²⁰⁹ Abbott (1988), p. 59.

²¹⁰ Bearpark/Schulz (2007), p. 240, Donald (2005).

²¹¹ Drake (2011), Kroha (2009).

²¹² Caplow (1954), pp. 139-140.

²¹³ Abbott identifies 'diagnosis, treatment and, inference' as the essence of any professional practice (Abbott (1988), p. 40).

people can list the letters in the alphabet'.²¹⁴ Thus, UK PSCs promise to better understand their security environment (**diagnosis**), which allows them to use a 'more sophisticated', low-profile approach (**treatment**).²¹⁵ Moreover, UK PSCs claim that their approach allows for greater flexibility: If necessary, UK PSCs adopt an overt, more robust stance, but, most of the time, their covert low-profile approach minimizes their clients' risk-exposure by reducing the likelihood of a confrontation (**inference**).²¹⁶ The following testimonial is testament to the UK PSI's success in establishing this "British Way" of providing security: 'They [UK PSCs] learned how to keep a low profile. Now these other guys: Triple Canopy, Blackwater, etc.? They don't change their tactics'.²¹⁷

Efforts to restrict entry into the profession, however, have been largely unsuccessful. "'Aggressive self-regulation'" through the BAPSC has yet to attract meaningful government support and its charter's promise to commit its members 'to transparency, implying that they have to disclose their corporate structures and their relations with their offshore bases, partners, and sub-contractors' remains unfulfilled.²¹⁸ Moreover, the FCO's decision to award its Iraq contract to *Garda World*, a Canadian PSC, suggests that the UK PSI's monopoly is porous even in its domestic market.

Autonomy: According to Freidson, 'self-control is essential' for professionalism.²¹⁹ To claim such autonomy, the UK PSI has to show that its regulating authority, i.e. the BAPSC, can exert effective professional control over its members. Freidson argues that effective professional control relies on four conditions, which, applied to the PSI, are (1) PSC behaviour has to be observable, (2) PSCs have to depend on the BAPSCs approval, there has to be (3) a willingness to exercise supervision and (4) an effective way to influence PSC behaviour.²²⁰ The BAPSC acknowledges that 'any investigation [...] will be difficult to perform' in Iraq or Afghanistan²²¹ and, while the BAPSC could 'suspend or withdraw membership rights',²²² it is unclear what, if any, effect this would have. Moreover, it seems unlikely that UK PSCs would be willing to exercise effective self-regulation: While noting

²¹⁴ Willis-Fleming (2009).

²¹⁵ Worcester (2005), Drake (2011). See also Higate (2011), pp. 10-16.

²¹⁶ Donald (2005), Gray (2005).

²¹⁷ USAID employee in Cotton *et al* (2010), p. 28. See also Economist (2007).

²¹⁸ Bearpark/Schulz (2007), pp. 247-248.

²¹⁹ Freidson (2001), p. 17.

²²⁰ Freidson (1974), p. 93.

²²¹ Bearpark/Schulz (2007), p. 248.

²²² *Ibid.*

several instances of problematic behaviour in interviews, no UK PSC representative was willing to go “on the record” criticising his/her peers. Indeed, the PSC literature largely echoes these arguments in its scepticism of the merits of self-regulation.²²³

However, the UK government remains committed to self-regulation in the apparent belief that UK PSCs will abide by it.²²⁴ Freidson seems to make a similar point about the medical profession: It also violates the conditions for effective professional control, yet while this ‘social structure *permits* certain kinds of behaviour [...] that behavior does not occur’.²²⁵ Freidson, therefore, suggests that medical professionals are restrained from engaging in problematic behaviour by the medical profession’s norms and informal organization.²²⁶ Applied to the PSI, this would suggest that PSCs and their employees could abstain from misconduct even if effective formal regulation is absent.

Cultural Characteristics of Professionalism in the PSI

Cultural characteristics generally describe the effect broader social and cultural trends have on professions, which the next section will touch upon.²²⁷ However, if Freidson is right that a profession’s norms and informal organization affect its behaviour, the inner-workings of UK PSCs merit closer attention. Here, this thesis agrees with FSvB’s assessment insofar as it is unlikely that genuine PSI professionalism provides sufficiently strong norms and informal organization to significantly affect PSC behaviour.²²⁸ Instead, the following discussion looks to the continued influence of military professionalism in the PSI to provide the norms and informal organization that shapes PSC behaviour.

While Higate notes ‘a good deal of continuity between military and PMSC culture’,²²⁹ such claims are seemingly incompatible with the internationalization of the PSI’s workforce and UK PSCs’ emphasis on non-military skills. To resolve this apparent paradox, it is important to consider how UK PSCs are organized. Their businesses are generally divided into three parts: “Operations” provide security services, while “Analysis” produces information services and

²²³ See Chapter 6, Section 5.

²²⁴ Reed (2010), Willcocks (2008).

²²⁵ Freidson (1974), p. 96.

²²⁶ *Ibid.*, pp. 96-103.

²²⁷ Haskell (1984), p.xii, Abbott (1988), p. 177. Abbott notes that these trends affect individual professions differently (*Ibid.*, p. 143). While attitudes to some professions have deteriorated markedly, e.g. the legal profession (Galanter (1997), p. 807ff.), the armed forces have retained their high social esteem (Ipsos Mori (2008), p. 9ff., MoD (2012)).

²²⁸ Schaub/Franke (2009), p. 14.

²²⁹ Higate (2011), p. 338.

“Support Services” includes legal, HR, sales, etc.²³⁰ Within “Operations”, ‘contractors of similar background tend to cluster together’²³¹ - often along regimental lines, as highly-qualified employees enter the industry and switch jobs based on personal recommendations by former colleagues.²³² Moreover, individual UK PSCs have developed a reputation for preferably recruiting from specific regiments, which function as a signalling device in the labour market, especially in the newsgroups/internet-forums contractors rely on for information.²³³ “Operations” are thus often dominated by a small group of former soldiers that served together in their previous military career.²³⁴

Several reasons cause these small – several interviewees suggested the term “tribal”²³⁵ – groups to exert significant influence within their respective companies. First, its members occupy key standard-setting positions within PSCs, e.g. “Compliance Officer” and “Head of Crisis Management” and, secondly, there is little turnover among its managerial staff.²³⁶ This allows for the development of close relations between “Operations” and senior management, which interviewees suggest allows UK PSCs to develop stronger oversight and accountability structures.²³⁷ Within “Operations”, corporate authority is underpinned by residual military authority: PSC employees in corporate positions of authority generally hold a higher military rank and often had a previous command relationship with those they are tasked to supervise.²³⁸ This high level of cultural coherence within “Operations” is maintained, despite the increasing internationalization of the PSI’s workforce, by UK PSCs’ pattern of recruitment. UK PSCs recruit their TCNs and local staff along existing military lines. This allowed e.g., *Erinys* to manage the vast number of employees in its *Oil Protection Force*.²³⁹ Moreover, UK PSCs preferably employ former soldiers from Commonwealth countries, especially South Africa, Fiji, Australia and New Zealand,²⁴⁰ whose military training/culture is similar to the British army culture that dominates UK PSCs.

²³⁰ Priestley (2009), Drake (2011).

²³¹ Schaub/Franke (2009), p. 93.

²³² Smith (2006), Low (2007), p. 12, Geddes (2006), p. 73.

²³³ Beese (2006), Worcester (2005), Lynch (2011), Edwards (2011).

²³⁴ Toyne-Sewell (2011), Worcester (2009).

²³⁵ Clissitt (2010), Phillips (2010), Priestley (2009).

²³⁶ Thompson (2011), Gray (2005).

²³⁷ Beese (2011), Gray (2005).

²³⁸ Worcester (2005), Beese (2006), Legge-Bourke (2010), Phillips (2010), Toyne-Sewell (2011).

²³⁹ Hutchings (2006).

²⁴⁰ Worcester (2005), Phillips (2010), Lynch (2011), Thompson (2011).

Finally, “Operations” often have a disproportionate influence on the overall corporate culture of UK PSCs. Recent years have seen many UK PSCs diversify and, in interviews, PSC representatives would frequently underscore how many senior management positions were now held by employees without a military background.²⁴¹ Still, interviews suggest that “Operations” are disproportionately important for revenue, profits and clients’ perception of UK PSCs.²⁴² Moreover, PSC representatives, employees and clients without a military background overwhelmingly associate UK PSCs’ corporate culture with the military and identify “Operations” as responsible for shaping said culture.²⁴³ Interestingly, “civilian” employees do not view the prevalence of military culture in UK PSCs as negative: ‘Ultimately, we are responsible for a lot of people in harm’s way. It is good to know that our company cares about something else besides the bottom-line’.²⁴⁴

Conclusion

This section presented an ambivalent picture of professionalism in the PSI. The UK PSI has neither a solid monopoly over even parts of the legitimate provision of private security services, nor a strong claim to autonomy. Still, the UK PSI has been remarkably successful in gaining recognition for its “British Way” of providing security and has successfully resisted outside regulation. Indeed, its success in claiming a professional monopoly and autonomy has arguably been tied to the continuing influence of military professionalism: Clients acknowledge the “British Way” of providing security, because the PSC employees ‘were former SAS guys’²⁴⁵ and its proponents argue that UK PSCs can self-regulate because they ‘are all led by ex-servicemen’ with an ‘understanding of the military ethos’.²⁴⁶ The section further showed military professionalism to have a strong influence on PSC behaviour and self-organization. The discussion showed how military professionalism is ingrained in the corporate culture of UK PSCs, how corporate and residual military authority structures are intertwined and how military professionalism extends even to civilian employees of UK PSCs. It is thus fair to conclude that UK PSCs have used the continued influence of military professionalism to gain recognition for its professionalism.

²⁴¹ Toyne-Sewell (2011), Beese (2011).

²⁴² Marshall (2010), Schenz (2009), Sorge (2009) Forbes (2007), Anonymous 06 (2011), Hession (2007), Lewry (2009), Brown (2008).

²⁴³ Lewry (2009), Nibblett (2008), Hession (2007), Donn (2012), Marshall (2011).

²⁴⁴ Nibblett (2008). See also Donald (2005), Brown (2008), Drake (2011).

²⁴⁵ USAID employee in Cotton *et al* (2010), p. 28.

²⁴⁶ Willcocks (2008).

The discussion about the monopolist characteristics of professionalism raises an important question, namely whether greater professionalism is necessarily always beneficial. This question will be revisited in the final chapter, when this thesis discusses if and how professionalism in the PSI should be encouraged. The next section will discuss Abbott's and Burk's conceptualizations of professionalism and their emphasis on its socially constructed nature.

Section Nine: The Socially Constructed Nature of Professionalism

Sections seven and eight touched on the socially constructed nature of professionalism as exemplified by PSCs' social imperative and their professional autonomy and monopoly. FSvB also make reference to this when discussing the notion of legitimacy with respect to professionalism in the PSI.²⁴⁷ More importantly, its socially constructed nature lies at the heart of both Burk's and Abbott's understanding of professionalism. While this chapter has, so far, characterized professionalization as a one-way street by focussing on the actions PSCs take to gain recognition, the subsequent section engages with Abbott's and Burk's interactive approach to professionalization. Even though Burk draws heavily on Abbott's work, this section also shows that their respective conceptualizations of professionalism are ultimately incompatible and that Abbott's notion of jurisdiction and its emphasis on competition provide important insights for the study of PSCs, especially *vis-à-vis* the relationship between professionalism in the PSI and military professionalism.

Legitimacy, Competition, Culture: Divergent perspectives by Burk and Abbott

According to Burk, legitimacy – in addition to expertise and jurisdiction, which correspond to Abbott's notions of professional knowledge and jurisdiction – constitutes one of the 'prescriptive factors that [...] mark an occupation as a profession'.²⁴⁸ By arguing for a 'relatively "high status"' as a defining feature of professions,²⁴⁹ he also criticizes Abbott for not according legitimacy a similarly important role.²⁵⁰ Abbott's point of departure is the

²⁴⁷ Schaub/Franke (2009), p 91ff. Indeed, concerns about the lack of legitimacy feature prominently in the PSC literature, albeit without specific reference to the notion of professionalism in the PSI (see, for example, Holmqvist (2005), p. 8, Isenberg (2009 III), p. 47).

²⁴⁸ Burk (2002), pp. 43-44.

²⁴⁹ *Ibid.*, p. 41.

²⁵⁰ *Ibid.*, p. 42. Interestingly, Burk acknowledges that traditional views of military professionalism, i.e. Huntington's and Janowitz's writings, do not consider high status a defining characteristic of military

synthetic professionalization concept (see sections seven and eight), which best describes the implicit model FSvB rely on in their criticism of PSI professionalism. He argues that, while the concept of synthetic professionalization ‘has some important successes to its credit’, it also presents a number of empirical and conceptual shortcomings.²⁵¹ In its stead, Abbott proposes an alternative approach that defines professions by the tasks they perform and the necessary knowledge to perform such tasks. Rather than in isolation, Abbott regards professions as existing in the context of a ‘system of professions’, within which they compete for jurisdiction.²⁵² Thus, in his view, a profession is not defined by its structural, functional, monopolist and cultural characteristics, but by their professional knowledge and jurisdiction. A profession merely adopts structural, functional, monopolist and cultural characteristics to claim jurisdiction over tasks. They are therefore tools rather than defining characteristics.

The defining role jurisdiction thus plays in Abbott’s understanding of professionalism suggests flaws in Burk’s criticism. Contrary to Burk’s assertion, Abbott does not claim that ‘an occupation’s struggle for professional standing rests entirely on [...] abstract knowledge’.²⁵³ Instead, Abbott states that ‘[i]n claiming jurisdiction, a profession asks society to recognize its cognitive structure’.²⁵⁴ In other words, knowledge alone matters little within the system of professions if others do not acknowledge it. Abbott’s approach to professionalism differs from that of Burk in two additional ways:

Legitimacy

Burk rightly notes that Abbott uses the term legitimacy with respect to professionalism²⁵⁵ and, indeed, one could argue that Burk’s understanding of legitimacy describes something akin to the “societal recognition” envisioned in Abbott’s jurisdiction. However, Abbott’s understanding of legitimacy differs from Burk’s insofar as it allows ‘for different types and levels of jurisdiction’.²⁵⁶ In addition to public opinion, which perhaps best resembles Burk’s notion of legitimacy, jurisdictional claims can be made in the legal system or in the

professionalism, in part, because at the time of writing, the military profession was not awarded such high status (*Ibid.*, p. 45).

²⁵¹ See Abbott (1988), p. 16ff for a detailed discussion.

²⁵² Abbott (1988), p. 33

²⁵³ Burk (2002), p. 42.

²⁵⁴ Abbott (1988), p. 59.

²⁵⁵ Burk (2002), p. 58. The section, to which Burk refers, is Abbott (1988), pp. 184-195.

²⁵⁶ *Ibid.*, p. 34.

workplace, according to Abbott.²⁵⁷ Indeed, since perceptions of professions only change slowly, jurisdictional claims can even persist on “residual” recognition ‘long after the realities they imply have disappeared’.²⁵⁸ For example, clients continue to praise UK PSCs, because they are staffed by ‘former SAS guys’,²⁵⁹ while interviews suggest that former SOF personnel are and probably have always been a minority among PSC employees.²⁶⁰ His notion of “different types and levels of jurisdiction” also leads Abbott, unlike Burk, to opt against considering a “high status” to be a defining characteristic of professionalism. This is not to suggest that a profession, in the long run, can sustain itself without legitimacy. However, Abbott’s approach emphasises the fluid character of professional jurisdictions and their underlying ‘cultural values’ as well as the slow pace of change, which allows ‘well-endowed professions [...] [to] put off the day of wrath’.²⁶¹ Moreover, Burk’s notion of a high-status implies popular appeal,²⁶² which is incompatible with Abbott’s emphasis on legitimation through the workplace and, especially, the legal system as alternative sources of support for jurisdictional claims.

Still, the concept of legitimacy may have some merits in the specific context of military professionalism as it is applied to state-organized militaries. For instance, through the incorporation of Huntingtonian ideas into military doctrine and practices, the need for legitimacy has become an integral part of the military’s professional knowledge. Moreover, the function the military provides and the means it employs constitute such high stakes that the high standard of societal recognition implied by the term legitimacy may be justified.²⁶³ Yet, the same cannot be said for the PSI, as neither the means the industry employs nor its function – while undoubtedly important – amount to similarly significant stakes as those in the state-organized military. Moreover, by identifying legitimacy as a defining characteristic, Burk’s professionalism is too narrow to capture aspects of professionalism in the UK PSI: While the PSI does not, to date, occupy a “high status” - public opinion tends to view its activities negatively - UK PSCs have gained some recognition for their professional

²⁵⁷ *Ibid.*, pp. 60-61.

²⁵⁸ *Ibid.*, p. 61. Abbott focuses on the persistence of public images, but the legal monopolies professions gain are often equally slow to change.

²⁵⁹ USAID employee in Cotton *et al* (2010), p. 28. See also Willcocks (2008), Marshall (2010).

²⁶⁰ Beese (2006), Worcester (2005), Phillips (2010). UK PSCs, of course, make use of this

²⁶¹ Abbott (1988), pp. 188-189.

²⁶² See Burk’s emphasis on the need for a ‘general belief’ (Burk (2002), p. 52).

²⁶³ Identifying such “special circumstances”, admittedly, not only fits poorly with Abbott’s approach, but also with “monopolists” like Johnson, Freidson and Berlant.

jurisdiction in the workplace, e.g. by establishing the “British Way” of providing security, and in the legal system, e.g. by gaining support for self-regulation and resisting other forms of regulation.

Competition

Burk also differs from Abbott in his conceptualization of professionalism with respect to competition. While both authors acknowledge competition for jurisdiction as an important aspect of professionalism, Abbott identifies competition for professional jurisdiction as the very essence of professionalism.²⁶⁴ Thus, he shifts attention away from the relationship between professions and society, which arguably dominates Burk’s discussion.²⁶⁵ Instead, Abbott focuses on the relationship between different professions and on the mechanics of competition.²⁶⁶ Abbott’s focus on this inter-professional relationship is particularly useful for understanding professionalism in the PSI – not least because it provides an analytical tool for addressing FSvB’s aforementioned concern that PSCs could eventually “dilute” military professionalism.

Following Abbott’s account, one precondition for competition between the PSI and the military for jurisdiction would be the development of a distinct professional knowledge. As previously noted, PSCs and their employees are increasingly developing a sense of “ownership” of their industry.²⁶⁷ This “ownership” manifests itself in debates within the PSI,²⁶⁸ which suggest that the idea that private security provision requires more than military skills increasingly gains traction in the UK PSI.²⁶⁹ Indeed, PSCs seem eager to develop and formalize a professional knowledge distinct from that of the military: Several PSCs have reached out to universities and participated in academic research into the private provision of security – independent from the military.²⁷⁰ UK PSCs are thus clearly eager to develop

²⁶⁴ Abbott (1988), p. 2. Even professional knowledge, which Burk saw at the heart of Abbott’s approach, is ultimately merely a means to an end in the pursuit to claim and defend professional jurisdiction (See, for example, Abbott’s discussion of the reinterpretation alcoholism (Abbott (1988), p. 37ff) and of the role of the clergy (*Ibid.*, p. 185ff.)).

²⁶⁵ Burk (2002), pp. 50-52.

²⁶⁶ ‘Social forces’, while immanently important for professions, do not affect them directly, but ,through the structure within which the professions exist’, i.e. the system of professions (Abbott (1988), p. 33).

²⁶⁷ See section 3.

²⁶⁸ Examples include the Security in Complex Environments Group (SCEG) and Aprodex’s Operating in Complex Security Environments Group.

²⁶⁹ Lynch (2011), Loe (2010), Higgins (2011).

²⁷⁰ Examples include cooperations with Campus University Vienna (Kroha (2009)), the University of Aberdeen (Drake (2011)) and the creation of The Security Institute (Cook (2006)).

their own professional knowledge and to use it to claim jurisdiction over at least some aspects of the provision of security in high-risk environments.

Likewise, there is evidence that the military also contests this jurisdiction. According to Burk, the military successively expanded its role from ‘the management of violence between armies at war’ at the end of WWII, via the management of defence during the Cold War and the management of peace in its aftermath.²⁷¹ Thus, while Burk rightly notes that the military’s core function continues to be the “management of violence between armies at war”, the military clearly also claims jurisdiction over the provision of security in post-conflict environments. Indeed, the extent to which the military perceives itself to be in competition with the PSI is evident in the overwhelmingly negative assessments of the PSI on the part of soldiers.²⁷²

Dual Membership and Semi-Professionalism

Interviews with PSC employees, however, suggest a more complex picture than outright competition between the military and the PSI. When asked to compare their current work to their previous military career, PSC employees took great care to distinguish between the two.²⁷³ Several interviewees further claimed that their companies are unable to provide military services or to even provide their own services in an environment like Iraq during the “bubble” without the simultaneous presence of the military.²⁷⁴ Drawing a clear distinction between the PSI and the military seems to be motivated by PSC employees’ desire to protect the latter. Indeed, several interviewees were opposed to PSC employees receiving greater recognition for their service, arguing that this may diminish the recognition soldiers receive for theirs.²⁷⁵ One PSC representative noted: ‘You have to keep in mind that most of us are veterans with sometimes decades of military service to our name. While we do this [private security provision] now, most of us still care deeply what’s going on in the military.’²⁷⁶ This suggests that PSC employees are (or at least regard themselves as) members of two professions: They are members of the PSI and, as veterans, they are still part of the military profession.

²⁷¹ Burk (2002), p. 53.

²⁷² See Stewart (2007), p. 398.

²⁷³ Higgins (2011), Loe (2010), Edwards (2011).

²⁷⁴ Willis-Fleming (2009), Clarridge (2010), Clissitt (2010). See also Hutchings (2006).

²⁷⁵ Lynch (2011), Edwards (2011).

²⁷⁶ Clissitt (2010).

This dual membership sits uneasily with Abbott's notion of competing professions, yet it provides a more satisfying account of PSC employees' motivation than the PSC literature to date, which seemingly suggests that an individual can spend years in the military, only to drop all allegiance to it as soon as she/he joins a PSC. A possible way to conceptualize the relationship between PSC employees and the military may lie in Amitai Etzioni's notion of semi-professions. Etzioni argues that semi-professions thrive for recognition²⁷⁷ and, on the margins, clash over issues of professional knowledge and jurisdiction with their "parent" profession.²⁷⁸ Still, their relationship to their "parent profession" is often relatively stable and semi-professions thrive for acceptance alongside rather than at the expense of their parent profession.²⁷⁹ Indeed, even a symbiotic relationship between a semi-profession and its "parent profession" is possible: Nursing, for example, has greatly profited from the professionalization of medicine in the last century – all the while the two competed with one another for jurisdiction in the workplace.²⁸⁰

Conclusion Part II:

Sections seven and eight suggested that professionalism in the UK PSI is largely an extension of military professionalism, which plays an important role in the quotidian activities of UK PSCs. Within the organizational remit of PSCs, military professionalism functions as an "organizational lubricant", i.e. it helps UK PSCs to develop a coherent corporate culture, on which UK PSCs rely for coordination when they delegate authority to staff "in the field". With respect to PSCs' environment, military professionalism also fulfils an important signalling function, i.e. UK PSCs emphasise their employees' professionalism when they advertise their services and the merits of self-regulation. Section nine discusses Abbott's notion of professionalism as jurisdiction and Etzioni's concept of semi-professions to delineate the relationship between professionalism in the PSI and military professionalism. While the chapter argued that the competition for jurisdiction between PSCs and their clients has not been particularly intense to date, it raises the question whether, as FSvB have suggested, it would be problematic, should competition intensify in the future.

²⁷⁷ Etzioni (1969), p. vi.

²⁷⁸ *Ibid.*, p. xvi.

²⁷⁹ *Ibid.*, p. Xvi. See also Abbott (1988), pp. 66-67.

²⁸⁰ Abbott (1988), p. 67.

Would Greater Jurisdictional Competition Be a Problem?

First of all, to Abbott, jurisdictional competition is a fact of professional life²⁸¹ and thus cannot be averted by declaring PSCs to be a different profession – as FSvB seem to suggest.²⁸² While “professional death” due to loss of jurisdiction is theoretically possible,²⁸³ there is little evidence that the emergence of the PSI might cause military professionalism to suffer this fate, nor does it seem likely that the PSI will be fully integrated into the military profession, although some legislative initiatives in the USA advocate greater integration.²⁸⁴ Indeed, arguments could be made that PSCs are strengthening military professionalism: The military no longer offers the prospect of a life-long career to all or even a majority of its members, and studies of UK veterans indicate that soldiers with combat experience struggle most to re-integrate into civilian life.²⁸⁵ The financial disincentives this increasing gap in their lifetime earnings produces, therefore, should propel soldiers to avoid combat, which Huntington considers to be at the heart of military professionalism.²⁸⁶ PSCs, however, offer a job market, which values the very skills combat-experienced soldiers gain during their military career and thus make it more attractive again for recruits to choose a combat intensive role in the military – a possibility, which the PSC literature’s frequent criticism of the “revolving door”²⁸⁷ and the migration of soldiers to the PSI yet has to consider.²⁸⁸

Secondly, the extent to which jurisdictional competition is problematic arguably depends on what aspect of the military profession is at stake. Not all tasks the military currently performs are central to its professional identity and Burk suggests that “pruning” some of the expansion the military has undergone recently by ‘contracting out part of the military’s jurisdiction’ could ‘strengthen military professionalism’ by allowing it to refocus on core aspects of its professional identity.²⁸⁹ While the previous section highlighted the military’s claim to professional jurisdiction over the provision of security in a high-risk environment, providing personal protection to commercial actors, NGOs and even government institutions can hardly be considered a core function of the military. At the same time, UK PSCs have

²⁸¹ Abbott (1988), p. 2.

²⁸² Schaub/Franke (2009), p. 102, Franke/v. Boemcken (2011), pp. 14-15.

²⁸³ *Ibid.*, pp. 28-30.

²⁸⁴ See Chapter 6 Section 8.

²⁸⁵ Prigerson *et al* (2001), p. 99ff, Iversen *et al* (2005), p. 175.

²⁸⁶ Huntington (1957), p. 11.

²⁸⁷ Ackermann (2010 II), Frank (2008).

²⁸⁸ Spearin (2006).

²⁸⁹ Burk (2002), p. 53.

stressed that they view their work as different from that of the military and their actions to date largely confirm this claim: UK PSCs have limited their weaponry in line with their defensive service provision and, more importantly, when US PSCs were expressing their interest to provide the kinetic element in a possible UN peacekeeping mission,²⁹⁰ UK PSCs overwhelmingly rejected this idea.²⁹¹ Instead, what PSCs thrive for seems to be a symbiotic relationship to the military. In said relationship, the military retains exclusive jurisdiction over offensive combat services, while there is some competition for jurisdiction over defensive services. As in medicine, the military would likely dominate the development of the applicable professional knowledge, but, like nursing studies, PSCs could carve out a niche by developing an expertise for adapting defensive services for the protection of, for example, private sector clients.

Instead of constituting a problem, this conclusion has shown that competition for jurisdiction between the military and the UK PSI can actually benefit both parties. Indeed, a well-functioning symbiosis between the two professions would assist the military in its overall mission, i.e. to sufficiently secure a post-conflict environment for reconstruction to commence, while allowing it to shed a function it is institutionally neither equipped nor trained to fulfil. As one Bureau of Diplomatic Security official noted: 'Whoever thought that the US Marine Corps would be best suited to provide diplomatic security had either never met a marine or a diplomat.'²⁹² Aside from strengthening military professionalism in the PSI, fostering such a symbiosis between government institutions, especially the MoD, FCO and DFID, and the UK PSI is an important way in which governments can exert influence on PSC behaviour in addition to regulating the industry. This chapter's conclusion and, more importantly, the thesis' conclusion will return to this issue in detail to discuss how professionalism can specifically be used to influence PSC behaviour.²⁹³

²⁹⁰ Witter (2006), p.1.

²⁹¹ Worcester (2009), Clissitt (2010), Beese (2006), Donald (2006).

²⁹² Higgins (2011).

²⁹³ See Conclusion Section 4.

Section Ten: Conceptualizing the Motivation of PSCs and PSC Employees

Part I focused on the divergent economic interests of PSCs and their employees. It concluded that the costs of conflict between PSCs and their employees are high for either party and thus create a strong incentive to compromise. Part II argued that military professionalism plays an important role in the UK PSI. Its importance raises the question whether prevalent conceptualizations of PSC behaviour sufficiently account for the role of professionalism.

PSC Employee Motivation: The Limited/Unlimited Conundrum

The prevalent view of PSC motivation faces a conundrum that has so far received surprisingly little attention: The number of contractor fatalities suggests that PSCs in Iraq have been exposed to a level of risk at least comparable to that of the military.²⁹⁴ Yet, reports of PSC employees refusing to perform their duties remain rare²⁹⁵ and several media reports and accounts by customers highlight the courage with which PSC employees performed in situations of extreme danger.²⁹⁶ Why would individual contractors, driven primarily by the limited aim of financial profit, choose to fulfil a ‘contract of unlimited liability’?²⁹⁷

There are several possible explanations why employees may decide to join PSCs and perform their duties, even if this means risking their lives. For example, interviews and biographical accounts suggest that contractors have a greater tolerance for risk, causing them to find the danger of death or serious injury in the PSI acceptable.²⁹⁸ Interviews suggest that PSC employees underestimate their risk exposure,²⁹⁹ as data on contractor fatalities was not available until recently and remains incomplete.³⁰⁰ Strategic altruism also motivates PSC employees’ risk tolerance: Several interviewees stated that, in the case of death or serious injury, their insurance at least secured their family’s financial well-being.³⁰¹ Once a contractor has joined a PSC, concerns about his/her security often become secondary to the well-being of his/her colleagues or clients.³⁰² PSC employees also report that, when under attack, the decision to act courageously is often instinctive, repeating routine behaviour that

²⁹⁴ Miller (2010).

²⁹⁵ Geddes (2006), p. 225, Shepherd (2008), p. 336, Marshall (2010).

²⁹⁶ Marshall (2011), Stewart (2007), p. 398, Etherington (2005), p. 222.

²⁹⁷ John Hackett in Baker (2011), p. 25.

²⁹⁸ Higate (2011), p. 329, Franke/von Boemcken (2011), pp. 736-737. Contractors often join PSCs because they ‘missed the action’ (Craig Maxim in Pelton (2006), p. 72, see also Ashcroft (2006), p. 7).

²⁹⁹ Higgins (2011).

³⁰⁰ Miller (2010).

³⁰¹ Edwards (2011), Lynch (2010).

³⁰² Ashcroft (2006), p. 7, Geddes (2006), p. 203, Loe (2010), Low (2007), p. 29.

they trained for and executed regularly throughout their military career.³⁰³ Finally, a commitment to professionalism³⁰⁴ and ideology may motivate contractors to disregard concerns for their own security.³⁰⁵ Notably, none of these explanations can be accommodated by the literature's conceptualization of PSC motivation and the importance it attributes to financial interests.

Instead, PSC employees are seemingly motivated by a variety of factors, among whom a single, dominant one cannot be easily identified. Moreover, interviews suggest that, while they perceive the PSI as being very different from the military, many contractors describe their work as a continuation of their military life.³⁰⁶ Low, for example, describes his decision to work for a PSC as 'I would soldier on [...] [i]t was what I'd done for 17 years'.³⁰⁷ In addition to their SOPs and their language, which closely resemble elements from their prior military life,³⁰⁸ PSC employees are surrounded by people similarly steeped in military culture: In addition to their fellow contractors, PSC employees often engage with military personnel during their work³⁰⁹ and socialize with them in their free-time.³¹⁰ Finally, as previously mentioned, recruitment to the PSI often takes place through a network of former military contacts. Given how strongly they are embedded in military culture, PSC employees are unlikely to sacrifice the non-financial interests that attracted them to the military life in the first place for marginally better pay. At the same time, financial factors are undeniably important to PSC employees – so much so that they are willing to switch jobs within the industry in pursuit of higher remuneration.³¹¹ A possible solution to this apparent paradox is that PSC employees separate the relationship to their work from that to their employer: While they view the former largely in non-financial terms, they emphasise the commercial nature with respect to the latter. One PSC employee stated that '[m]uch of what we do now [as PSC employees] is very similar to what we used to do as soldiers, but we are no longer

³⁰³ Ashcroft (2006), p. 23, Higgins (2011). Lawson argues that the tacit nature of conventions may even extend to their transfer and reproduction. Hence, the norms and values of military professionalism may be transferred into the PSI through routine behavior (Lawson (1997), p. 169).

³⁰⁴ Edwards (2011). See also section 6.

³⁰⁵ Pelton (2006), p. 56.

³⁰⁶ Lynch (2010), Loe (2010), Higgins (2011), Edwards (2011), Geddes (2006), p. 33.

³⁰⁷ Low (2007), p. 55.

³⁰⁸ Higgins (2011), Edwards (2011), Smith (2006).

³⁰⁹ Shepherd (2008), pp. 128-129.

³¹⁰ Ashcroft/Turlow (2009), p. 48.

³¹¹ See section 3.

working for queen and country, but for a private company'.³¹² This explains why PSC employees are willing to "pay the ultimate price" for their colleagues and clients and "soldier on" in the face of danger, yet talk about little else but money among one another and are willing to switch companies for a higher wage.

What Motivates PSCs?

The PSC literature and most traditional economists treat a company 'as if it were, in effect, a single person'³¹³ with rational profit maximization as its motivation. However, the central role that non-financial factors play in the motivation of a company's employees suggests that this view does not adequately describe the motivation of PSCs as a whole.

First, the behavioural theory of the firm argues that companies are "coalitions of participants" with competing interests. To generate organizational coherence, "participants" have to find compromises, which deviate from the choices a rational, profit-maximizing company would make. Hence, Cyert and March argue that '[p]rofit maximization [...] is either only one among many goals of business firms or not a goal at all'.³¹⁴ Secondly, the managerial theory of the firm stipulates that managers, who control but do not own their respective companies, 'pursue objectives other than profit maximisation', including their 'salary, status, power and prestige, and security'.³¹⁵ As a result, they may neglect long-term investments in favour of short-term performance, as their performance is often measured in quarterly earnings.³¹⁶ Indeed, biographical accounts frequently mentioned friction between regional/country-managers and senior management, as the former insist on costly security upgrades and refuse assignments that entail unnecessary risks.³¹⁷ Finally, 'the search for the corporate soul'³¹⁸ suggests that corporations have aims other than increasing shareholder value, as they are not isolated from society, but have a vested interest in its well-being. In interviews, PSCs frequently acknowledge their corporate social responsibility (CSR) and point to their regulatory efforts³¹⁹ and their support for charities³²⁰ as evidence for their wider societal engagement.

³¹² Edwards (2011). See also Geddes (2006), pp. 48-49, Shepherd (2008), p. 2.

³¹³ Marschak (1965), p. 447.

³¹⁴ Cyert/March (1992), pp. 7-8.

³¹⁵ Rowlinson (1997), p. 15.

³¹⁶ William Baumol in Rowlinson (1997), p. 16.

³¹⁷ Shepherd (2008), p. 262, Geddes (2006), p. 36, Low (2007), p. 15.

³¹⁸ Stevenson (1974), p. 709.

³¹⁹ Phillips (2010), Toyne-Sewell (2011).

If PSCs are characterized as being solely interested in financial profit, these behavioural, managerial and CSR influences are neglected. However, it is not sufficient to merely acknowledge the presence of these factors in the motivation of PSCs. What is instead needed is a way to conceptualize the relationship of financial and non-financial factors in the behaviour of PSCs. One possible way is proposed by Fligstein:

In the neo-classical theory of the firm, the motives and actions of managers and entrepreneurs presume that firms must maximize profits. [...] I claim that the central goal of managers in the past hundred years has been to make sure their firms survived.³²¹

Accommodating their employees' financial and non-financial interests, i.e. to impose 'beneficial constraints' on their corporate behaviour to have it conform with the norms and values of military professionalism,³²² makes more sense for a manager if he/she is focused on a PSC's long-term survival rather than maximising its financial profit. Moreover, corporate survival as a motivation for PSCs also explains why, at times, friction escalates to outright conflict between PSCs and their employees: When a PSC's profitability and, hence, long-term survival is threatened, management may feel that it lacks the room necessary for costly compromises with their employees.

Professionalism and Uncertainty

The chapter has so far focused on goal ambiguity in PSCs and the role of professionalism in overcoming it. However, Fligstein's focus on corporate survival suggests an even broader role for professionalism in PSC decision-making. Fligstein tries to understand how managers use the discretion afforded to them by the market. Unlike traditional economics, which sees managers as an instrument in maximising shareholder value, and managerialism, which emphasises their self-interest,³²³ he highlights the effect of uncertainty: 'Actors in organizations exist in murky worlds where the consequence of any given action is unclear'.³²⁴ Two reasons suggest that this emphasis on the unintended consequences of managerial actions is particularly applicable to the PSI.

³²⁰ Donald (2006).

³²¹ Fligstein (2004), p. 409.

³²² Wolfgang Streeck argues that beneficial constraints are short-term costs companies incur for long-term, often systemic benefits (Streeck (1999), p. 197ff).

³²³ Fligstein (2004), p. 408.

³²⁴ *Ibid.*, p. 411.

First, the conflicts in Iraq and Afghanistan have brought about changes that, in sum, mark a paradigm change for the PSI. Examples include the widespread use of PSCs by public sector institutions, the resulting increase in demand for their services, the internationalisation of the PSI's workforce and the exposure of PSCs to an unprecedented level of physical insecurity. In response, PSCs professionalized their corporate processes, developed more elaborate management processes and acquired the equipment and skills needed to service large public sector contracts. These changes are, however, still ongoing, as PSCs face the challenge of making their businesses sustainable in the aftermath of the "bubble" – a situation that exposes them to a significant level of uncertainty.³²⁵ Secondly, the PSI is now subject to seemingly persistent attention by the international media, the wider public and its political representatives. While most experts agree that private security will play an important role in expeditionary operations for the foreseeable future,³²⁶ PSCs' popular image has deteriorated from being largely unknown to ignominy. This adds further uncertainty, as PSCs need to consider the economic merits of their decisions and their consequences for public reputation.

Chapter five will elaborate further on the uncertainty resulting from how actions are interpreted when discussing PSCs' customer relations. However, given the changes the PSI is currently undergoing, recourse to military professionalism helps managers chart a course for their companies through this corporate *terra nova*. By ostensibly relying on military professionalism to inform their actions, PSCs can draw on the legitimacy of what some interviewees called the "gold standard" in providing security to make up for their own legitimacy deficit.³²⁷ Military professionalism, therefore, provides an important means for reducing uncertainty.

³²⁵ Phillips (2010).

³²⁶ Isenberg (2009 III), p. 47.

³²⁷ Phillips (2010), Isaacs (2010).

Conclusion

This chapter's discussion of the PSI's labour relations and the role of professionalism has important implications for any interaction with PSCs, be it as a client or as a regulator. While client relations will be discussed *en détail* in Chapter Five, some of these implications seem to be apparent already. First of all, a top-down approach to controlling PSC behaviour, for example through untargeted financial sanctions at the corporate level, is likely to produce suboptimal results. As this chapter has shown, PSCs lack the level of control over their employees such an approach would require to be effective. Instead, measures that treat PSCs as a "coalition of participants" and provides incentives to all its members may prove more effective. While the PSC literature has so far devoted little attention to what PSC employees could possibly want, interviews suggest that assistance with insurance matters could provide a useful yet inexpensive "carrot" to encourage desired behaviour. Secondly, the prevalence of military professionalism in the PSI may provide an avenue to influence PSC behaviour that may end up being more effective than more overt regulatory means. Several PSC employees suggested that they regretted the poor opinion their former military colleagues have of their profession, which one describes as 'mixture of suspicion and disdain'.³²⁸ Encouraging greater mutual respect, e.g. by instituting limited joint training sessions, a reciprocal exchange on personal security provision and a system of honours recognizing exceptional service by PSC employees, may foster military professionalism in the PSI and, thus, positively influence PSC behaviour. Finally, formal and informal lines of communication between UK PSCs and the FCO, UK armed forces and DFID should be improved. One example of how this could be accomplished is the FCO's decision to host the *Security in Complex Environments Group's* (SCEG) inaugural conference.³²⁹ Similar events could greatly foster mutual respect and thus improve coordination, even in the absence of formal mechanisms.

In addition to these amicable means of control, the contentious nature of labour relations in the PSI offers further opportunities to control PSC behaviour. Establishing lines of communication to PSC employees independent of their management and encouraging them to "whistle-blow" would likely increase transparency. Likewise, PSCs should be encouraged to report any misconduct by individual employees. The BAPSC's suggestion to install an

³²⁸ Edwards (2011).

³²⁹ ADS Advance (2012).

independent ombudsman is one possibly solution.³³⁰ However, the BASPC's ombudsman model lacks incentives for greater transparency, which could be provided by granting exemption from punishment to individual employees and by capping liability or granting anonymity to PSCs. This thesis' concluding chapter will return to these implications and the resulting policy advice. It will also discuss how formal and informal mechanisms of controlling PSC behaviour are best to be balanced. The next chapter, however, will take a look at the broader economic context in which PSC behaviour is embedded, i.e. the market for PSC service.

³³⁰ Bearpark/Schulz (2007), p. 248.

Chapter 4: The Market for Security¹

The previous chapter focused on the smallest aggregate in which economic activity takes place in the UK PSI, the individual UK PSC. It showed that the behaviour of UK PSCs cannot be accurately explained if their motivation is reduced to a single, coherent interest in corporate profit. Instead, UK PSCs are “coalitions of participants’ with different, often competing interests. To the extent that there is a corporate interest, it is based on a compromise between these participants, which is facilitated and informed by a shared sense of professionalism. However, explaining UK PSC behaviour based on motivations alone is comparable to drawing conclusions about a painting by studying a single pigment on its canvas. Corporate behaviour is influenced – traditional microeconomics would say determined – by the contextual structures, i.e. its external ‘constraints’.² Therefore, Chapter Four will analyse how UK PSC behaviour is affected by the market for private security services.

Competition and the Regulative Influence of Markets

Economists believe that markets influence the behaviour of their participants by determining prices, thereby disseminating information and providing incentives to engage in or abstain from certain behaviour.³ However, a market’s influence on its participants’ behaviour is conditional on its competitiveness. In competitive markets, all companies are price-takers not makers, as market power is too dispersed for any one actor to determine the market price.⁴ Companies could neither raise their prices above the market price nor risk violating accepted standards, as customers would take their business elsewhere and leave the company in question unable to attract new business in the future.

The PSC literature does not challenge the beneficial properties of competitive markets *per se*, but it disputes the competitiveness of the PSI’s.⁵ Authors point to the relatively small number of companies that initially plied their trade in Iraq and Afghanistan and the increase in prices for PSC services during the “bubble” as evidence for monopolistic structures in the

¹ Title is inspired by Avant (2005).

² Brauer (2006), p. 2, Douma/Schreuder (2002), pp. 184-187.

³ Frank/Bernanke (2007), p. 82ff.

⁴ Porter (1998), p. 8, Frank/Bernanke (2007), p. 170, Mankiw (2000), p. 314.

⁵ Jennings (2006), pp. 21-22, Markusen (2003), p. 478, Wagner (2010), p. 10, Stanger (2009), p. 33.

PSI.⁶ Hence, the market for private security services is believed to fail as a source of regulative influence on PSC behaviour.

Even though many authors emphasise the importance of competition in the PSI,⁷ little effort has gone into providing an in-depth analysis of the subject. The literature's disregard for insights from economics and/or management studies on competition is particularly unfortunate and yet symptomatic of its limited attention to economic aspects of PSC behaviour.⁸ This chapter argues that competition in the market for PSC services is neither too weak – granting UK PSCs “carte blanche” in their behavioural choices – nor too strong – forcing UK PSCs to maximise their profits to survive. The first section discusses the literature's approach to competition and its shortcomings. Section two considers different ways of measuring competition, provides a brief critique of Porter's “Five Forces” framework (FFF), which will be employed to discuss competitive pressures in the PSI. The section also highlights differences in how private and public sector clients procure PSC services. Sections three through seven apply Porter's “five forces” – (1) rivalry among existing competitors, the threat of (2) new entrants and (3) substitutes and the power of (4) customers and (5) suppliers – to illustrate the competitive pressure in the PSI. Finally, the chapter concludes by discussing how competition can be improved in the UK PSI.

⁶ Petersohn (2008), p. 2, Jennings (2006), p. 2ff, Holmqvist (2006), p. 30.

⁷ Avant (2007), p. 181, Brauer (2006), p. 8.

⁸ Perlo-Freeman/Sköns (2008), p. 4, Brauer, p. 1. See also Chapter 2 Section 8.

Section One: The Literature's View of Competition in the PSI

There are several reasons for concern about the literature's assessment of competition in the PSI. For one, its accuracy hinges on the market environment in Afghanistan and Iraq in 2003-2006 being exemplary for the PSI – an assumption that a growing number of experts are sceptical about. Rather than structural problems, they suggest that situational difficulties, e.g. poor pre-war planning⁹ and insufficient institutional experience with security contracting,¹⁰ are responsible for the temporary increase in demand for PSC services during the “bubble”.¹¹ Moreover, markets for PSC services elsewhere seem to be affected by different dynamics than the PSI in Iraq and Afghanistan. Rita Abrahamson's and Michael Williams' studies of private security markets in Kenya, Nigeria and Sierra Leone neither indicate significant levels of volatility nor disparities between supply and demand similar to those in Iraq and Afghanistan.¹² This stresses the need for an approach that focuses on the structural determinants of competition, rather than primarily on situational factors.

Monopoly

The validity of the literature's concerns further depends on the accuracy of its assessment of PSC competition in Iraq and Afghanistan in 2003-2005, especially the claim that the PSI is monopolistic. This would imply that the PSI as a market is dysfunctional, i.e., without regulatory intervention, the price mechanism, which is supposed to regulate PSC behaviour, would not work.¹³ Unfortunately, the PSC literature's use of this economic concept is vague: Is the PSI a *pure monopoly* or does it suffer from *monopolistic competition*? Economists define the former as a situation in which a single supplier, protected by market barriers, is not a price-taker, i.e. the monopolist can determine the price for its goods/services.¹⁴ However, Avant lists more than 130 site/personnel security companies¹⁵ - a figure that clearly violates the single supplier requirement of a *pure monopoly*. Indeed, even the less restrictive legal definition of a monopoly – a supplier enjoying a market share in excess of

⁹ Ricks (2006), Miller (2006), p. 25ff.

¹⁰ The reconstruction in Iraq attracted companies with little previous experience operating in high-risk environments (Miller (2006), p. 153ff).

¹¹ Isenberg (2009), p. 154, Donald (2006 II), p. 15, Pelton (2006), p. 105.

¹² Abrahamson/Williams (2005 I-III).

¹³ Stiglitz (2009), p. 11.

¹⁴ Bannock *et al* (2003), p. 262, Frank/Bernanke (2007), pp. 284-285.

¹⁵ Avant (2005), pp. 13-14. The PSCAI estimates 181 companies in Iraq alone (Rosemann (2008), p. 9).

25%¹⁶ - seems inapplicable to the PSI. Interviews with PSC representatives confirm that, while there are differences in PSCs' respective market-shares, no single company dominates the industry.¹⁷ The concept of a *pure monopoly* is therefore inapplicable to the PSI.

Monopolistic Competition

Monopolistic competition differs from a *pure monopoly* insofar as it describes a market in which many suppliers compete, whose products are similar, but not perfect substitutes and who are not protected by significant market-barriers.¹⁸ Unlike perfect competition, *monopolistic competition* would, in the short-term, allow a company to raise its prices without losing its customers, as long as the price hike does not exceed the costs of using an imperfect substitute.¹⁹ In the long-term, however, higher prices would attract new market entrants, forcing the company to reduce prices or face a loss in customers. Therefore, a company's ability to raise prices without losing its customers depends on its ability to deter competitors, i.e. its market power. Frank and Bernanke identify five sources of market power: (1) 'Exclusive Control over Important Inputs', (2) 'Patents and Copyrights', (3) 'Government Licenses or Franchises', (4) 'Economies of Scale' and (5) 'Network Economies'.²⁰ Closer examination, however, shows that none of these factors has a significant presence in the PSI.

Whereas their reliance on technology often grants defence companies *exclusive control over important inputs* and the protection afforded by *patents and copyrights*,²¹ the quotidian work of PSCs is neither technology-intensive nor dependent on specific raw materials. Likewise, while PSCs generally require licenses to operate in a given country, these licenses do not offer PSCs the exclusive market access implicit in Frank and Bernanke's *government licenses and franchises*.²² There is also no evidence of *economies of scale*, i.e. diminishing unit costs as the total number of units increases, in the PSI.²³ Indeed, the notion that PSCs are little more than 'a retired military guy sitting in a spare-bedroom with a fax machine and

¹⁶ Bannock *et al* (2003), p. 263.

¹⁷ Phillips (2010), Isaac (2010), Claridge (2010).

¹⁸ Bannock *et al* (2003), pp. 261-262, Frank/Bernanke (2007), pp. 284-285, Mankiw (2000), p. 71.

¹⁹ Frank/Bernanke (2007), p. 170, 284.

²⁰ *Ibid.*, pp. 287-288.

²¹ To integrate technology faster, its developer is often used for training, maintenance and operational support (Schumacher (2006), p. 31, Stanger (2009), p. 93).

²² Frank/Bernanke (2007), p. 287.

²³ Bannock *et al* (2003), p. 114. See also Jennings (2006), p. 19.

a Rolodex”²⁴ is clearly at odds with the large up-front investments usually associated with economies of scale.²⁵ Finally, while networks influence how PSCs compete, their influence is not comparable to the *network economies* sustaining the dominance of *Microsoft Windows* in the market for PC operating systems.²⁶ The lack of clearly identifiable sources of market power suggests that the literature’s concerns about monopolistic structures in the PSI are largely unfounded. However, the discussion above exemplifies how a closer engagement with economic concepts could benefit the literature’s understanding of PSC behaviour.

Excess Demand

This raises the question whether excess demand alone can be indicative of a lack of competition. Temporary asymmetries between supply and demand are to be expected, as market participants cannot react to price signals instantly.²⁷ Such “time lags” can cause considerable price distortions, especially if demand increases significantly and unexpectedly, as it was the case during “the bubble”. While much has been written to account for the increase in demand for PSC services,²⁸ the state of the PSI prior to the “bubble” has largely been overlooked as a cause for the subsequent excess in demand.

While the UK PSI emerged in the 1970s, for much of its history it has been a “cottage industry” catering to a relatively small group of customers.²⁹ The attacks of September 11th, 2001 changed this insofar as they significantly increased the demand for PSC services. *CRG’s* business in Europe and North America, for example, increased by 35% in 2001-2003.³⁰ However, interviews suggest that this post-9/11 boom steered the PSI towards different activities than those subsequently required in Iraq and Afghanistan. Companies were primarily concerned about business continuity, which required the purchase of consultancy and information products rather than large numbers of armed security contractors.³¹ Expansion into developing countries had become increasingly important, but the markets in question were relatively secure, which created little demand for armed security.³² Even

²⁴ Wood in Silverstein (2000), p. 169.

²⁵ Frank/Bernanke (2007), pp. 287-289.

²⁶ *Ibid.*

²⁷ Neo-classical economics often assumes such adjustments to be instantaneous (North (1993), p. 1).

²⁸ See Chapter 2 Section 4.

²⁹ See Chapter 2 Section 6.

³⁰ Wynne-Williams (2004).

³¹ Schenz (2009), Sorge (2009), Forbes (2007), Stoppenkamp (2009). See also Lloyd’s (2007 I-II).

³² While interviews with clients suggest that security is not a primary concern in investment decisions (Schenz (2009), Sorge (2009)), high-risk environments are rarely lucrative markets (Worcester (2009)).

companies operating in high-risk environments had become increasingly reluctant to rely on armed security for their protection,³³ due to concerns about corporate social responsibility (CSR) and corporate liability.³⁴ Finally, while UK PSCs were already used for diplomatic security, for example, during the conflict in Kosovo, the resulting demand was negligible in comparison with Afghanistan and Iraq.³⁵ Therefore, while the market for security services expanded in the decade prior to the “bubble”, its “kinetic end”, i.e. the provision of armed security services, did not grow significantly.

The resulting mismatch between supply and demand for armed security services suggests that the PSI suffered from temporary “growing pains” rather than inherent structural problems.³⁶ This assessment is supported by the industry’s development in response to “the bubble”. The success of relatively new companies, such as *Triple Canopy*, *Aegis* and *Blackwater*, in winning contracts against established competitors provides evidence against a structural lack of competition.³⁷ Moreover, the drop in prices for PSC services from 2005 onwards indicates increasing competition in the PSI. One measure for this depreciation in prices is the change in the compensation of PSC employees. Prior to the “bubble” highly qualified contractors could expect to earn \$400-\$500 per day, before wages rose to \$1,200 per day during 2004.³⁸ Since 2005, wages decreased again to \$400-700 per day.³⁹ As a result, Avant argues that ‘[i]n Iraq, the [private security] industry has demonstrated its deepening competitive [...] nature.’⁴⁰

Indeed, the PSI’s development – a partially dormant industry prior to 2001, a drastic increase in demand from 2003-2005 and the rebalancing of supply and demand since then – suggests that the PSI is maturing, which should provide further opportunities for improving competition in the market for PSC services. As it stands, the literature has highlighted a lack of competition, but it has remained vague on how to enhance it. To identify possible policies and assess their market-wide impact, an in-depth analysis of competition in the PSI is needed.

³³ McCredie (Shell) in Burns/Catan (2005).

³⁴ Economist (2008).

³⁵ Bearpark (2007).

³⁶ Avant (2006), pp. 330-331. See Chapter 2 Section 6.

³⁷ On *Triple Canopy* see Bergner (2005). On *Aegis* see Isenberg (2009), pp. 67-74. On *Blackwater* see Isenberg (2009), pp. 75-86, Scahill (2007). See also Avant (2006), p. 331.

³⁸ Grunberg (2004), Krott in COR (2009 XII).

³⁹ Bergner (2005).

⁴⁰ Avant (2006), p. 331.

Section Two: Introducing Michael Porter's Five Forces Framework

How to Measure Competition in the PSI?

Several methods seek to quantify competitive pressure. The most widely used measure, the Herfindahl-Hirschman-Index (HHI), compares the size of companies, denominated in their number of sales, to the industry they compete in.⁴¹ Competing measures are the Lerner Index and the Boone Indicator, which use companies' profit margins and the relationship of profit-elasticity to marginal costs, respectively, to determine competition in the underlying market.⁴² Unfortunately, all three measures are unsuitable for this thesis' purpose: the analysis of UK PSC behaviour. For one, they require data that are not readily available for the PSI. PSCs are unwilling to share information about their profit- and cost-structure;⁴³ market share and the overall size of the industry are unknown.⁴⁴ Moreover, all three measures exclusively look at past performance and tangible factors to analyse competition. However, its influence on PSCs' decision-making depends primarily on how companies assess their competitive environment and its future development and in forming such an assessment intangibles can be important. Indeed, in a market as volatile as the PSI, perceptions of future developments arguably have a greater impact than past performance. Finally, all three measures are limited to quantifying the intensity of competition, but cannot explain why competitive pressure is high or low in a given market.

Instead, this thesis will use Porter's *Five Forces Framework* (FFF). Its central idea is that competition in any industry can be described as the product of five forces, namely (1) the rivalry among competitors, (2) the threat of new entrants and (3) substitute products and (4) the power of suppliers and (5) buyers. The FFF is particularly suited to the analysis of the PSI, because it requires relatively little data to reach meaningful conclusions⁴⁵ and because, through the threat of new entrants and substitutes, it incorporates perceptions about intangibles and future developments.⁴⁶ Finally, by disaggregating competitive pressure into

⁴¹ The DoJ uses the HHI in anti-trust cases (DoJ (1997), §1.51).

⁴² Aghion *et al* (2005), p. 704ff, Boone (2008).

⁴³ Erik Prince in Milbank (2007). Due to corporate disclosure requirements in the UK, the situation *vis-à-vis* the UK PSI is somewhat less problematic.

⁴⁴ The Peace Operations Institute attempted to measure the size of the industry, but the meagre response rate of 13.6% and 6.1% make its information unreliable (Messner/Gracielli (2006) and Messner/Gracielli (2007)).

⁴⁵ Porter (1980), p. xxiii.

⁴⁶ Burke *et al* (1988), p. 63.

five components, the FFF provides insights into why the competitive pressure in an industry is high or low.

A Brief Critique of Porter's FFF

It is hard to overestimate the impact Porter's work had on the analysis of competition and corporate strategy since its publication in 1980 – among academics and practitioners alike.⁴⁷ Its continued relevance is attributable to the balance the FFF strikes between complexity and applicability, i.e. it is neither too specific to be limited to a single industry nor too complex to be useless to practitioners with little previous knowledge of economics.⁴⁸ This makes the FFF particularly suitable for this thesis, as its intended audience largely consists of non-economists. Given the FFF's prominent position in this thesis, a brief review of the criticism against Porter's work seems merited.⁴⁹

Some of the criticism aimed specifically at the FFF is not of concern due to this thesis' specific design and object of analysis. For instance, some critics are concerned about the arbitrary boundaries of Porter's unit of analysis, the "industry".⁵⁰ However, Chapters One and Two have shown that alternative demarcations, such as the broader approach prevalent in the PSC literature, are even more problematic.⁵¹ Criticism targeting the FFF's implicit cultural bias and, thus, limited suitability for the study of developing economies also does not apply to this thesis' focus, the UK PSI. Finally, the FFF's has been criticized for being insufficiently attentive to cooperation,⁵² resource constraints,⁵³ non-economic factors⁵⁴ and the role of innovation.⁵⁵ These limitations of the FFF are somewhat compensated by

⁴⁷ Douma/Schreuder (2002), p. 187-88. Mintzberg *et al* (1998), p. 82, Agyres/McGahan (2002), p. 41, Narayanan/Fahey (2005), p.208, Brandenburger (2002), p. 58.

⁴⁸ Grungy (2006), p. 215, Brandenburger (2002), p. 58, Mintzberg *et al* (1998), 113. See also Oviatt/Miller (1989).

⁴⁹ Some of this criticism is not aimed at the FFF, but at the conclusions drawn from it. Porter argues that a company should use the FFF to identify an industry with low competitive pressure and establish itself by choosing one of three 'generic strategies' (Porter (1980), p. 34ff.). Critics consider the number of strategies to be too low and do not believe them to be mutually exclusive (Miller (1992). However, while the idea of the generic strategies builds on the FFF the same is not true *vice versa*. Hence, the use of the FFF to analyse competition in the PSI is not predicated on accepting Porter's generic strategies.

⁵⁰ Winfrey *et al* (1996), pp. 200-201, Rumelt (1991), p. 167, Kay (1991), p. 60.

⁵¹ See Chapter 1 Section 10, Chapter 2 Section 4.

⁵² Brandenburger/Nalebuff (1997). Coyne/ Subramaniam (1996).

⁵³ Mintzberg *et al* (1998), p. 114, Grant (1991), p. 114ff, Barney (1991), pp. 100-101.

⁵⁴ Mintzberg *et al* (1998), pp. 112-113, Grundy (2006), p. 215.

⁵⁵ Moore (1993), Normann/Ramírez (1993), Larry Downes in Recklies (2006).

Chapters Three and Five, which put greater emphasis on resource constraints, non-economic factors and cooperation.⁵⁶

Finally, economists criticize Porter's methodology and his failure to acknowledge the intellectual origins of his work.⁵⁷ Porter addresses this criticism by pointing out that economics largely ignores the implications of competition on the quotidian behaviour of corporations.⁵⁸ If competition can be described as a spectrum, traditional economics focuses on its polar opposites, perfect competition and monopolies/oligopolies, but has little to say about the room in-between, where most economic activity takes place.⁵⁹ While Porter's failure to acknowledge the work of others may be objectionable, the FFF nonetheless succeeds in providing practitioners with a tool for assessing the competitive pressure in their industry – one that, incidentally, is widely used by PSC representatives.⁶⁰

How PSC Services Are Bought and Sold

UK PSC representatives suggest that there is a significant difference in how PSC services are marketed and sold to private and public sector clients.⁶¹ Yet, the PSC literature does not draw such a distinction. Indeed, its discussion is arguably dominated by large public sector contracts like the *Worldwide Personal Protective Services* contract (WPPS), which is owed to the fact that private sector demand is more fragmented. Yet, while most UK PSCs in Iraq and Afghanistan may ultimately be public sector-funded, these funds often reach them through private sector companies.⁶² In 2003-2007, prime contractors paid \$3-6 billion to PSCs, while DoS, DoD and USAID combined paid about \$5 billion.⁶³ The former figure excludes subcontractors and genuine private sector demand, which, interviews suggest, has steadily increased in recent years in Iraq.⁶⁴ Given its share of the overall demand for PSC services and the important role it plays in the UK PSI, taking a closer look at private sector demand is certainly justified.

⁵⁶ Innovation seems to be less of a factor in the PSI.

⁵⁷ Kay (1991), p. 60.

⁵⁸ Porter (1998), p. xi.

⁵⁹ Burke *et al* (1988), p. 63. Brandenburger (2002), p. 58.

⁶⁰ Phillips (2010), Claridge (2010).

⁶¹ The following characterization of public and private sector demand relies heavily on interviews with PSC representatives, especially Toyne-Sewell (2011), Claridge (2010), Priestley (2009), Beese (2011), Worcester (2009), Kroha (2009), Isaacs (2009), Drake (2011), Lewry (2009).

⁶² Lynch (2011), Marshall (2011).

⁶³ Cotton *et al* (2010), p. 12ff.

⁶⁴ Norman (2010), Spicer (2009), Richard Fenning in Spear's Wealth Management Survey (2008 IV).

Drawing a distinction between private and public sector clients is important, because they differ in how they procure PSC services. Private sector customers emphasise the importance of personal relationships: corporate security managers in need of security will turn to companies they already have an often personal relationship with or that have been personally recommended to them by trusted sources.⁶⁵ The resulting contractual relationship is often enduring, as private sector customers will rather renew a contract than search for a new supplier.⁶⁶ Insofar as private sector customers push for lower prices, this often occurs within existing contractual relationships rather than by retendering their contract.⁶⁷ Indeed, it is testament to the personal nature of the relationship that a change in corporate security manager frequently causes a change in private security provider⁶⁸ and that clients sometimes follow a PSC employee when he/she switches to a new company.⁶⁹ In contrast, public sector customers rely on more formalized contracting procedures. Contracts are often awarded following a public tender and an evaluation process that uses anonymised bids, which limits the influence of personal relationships.⁷⁰ Moreover, procurement rules restrict contract renewals and, instead, force public sector clients to return to the market.⁷¹

This public-private dichotomy does not apply perfectly. At times, political objectives and operational needs trump public sector procurement regulations: When the security situation in Iraq deteriorated, contractual provisions were tailored to fit specific, pre-selected companies⁷² or procurement regulations were ignored altogether.⁷³ Additionally, the CPA allowed reconstruction funds to be spent without having to obey US government procurement rules.⁷⁴ At the same time, Richard Phillips of *Edinburgh International* argues that the need to be perceived as transparent and fair increasingly forces private sector clients to standardize and anonymize their procurement procedures.⁷⁵ Still, the dichotomy describes the underlying structures of public and private sector contracting as it is perceived by PSC decision-makers. While individual contracts may be strongly influenced by situational

⁶⁵ Jeremy Stompa Orwin in Spear's Wealth Management Survey (2008 VII).

⁶⁶ Ashwell (2008).

⁶⁷ *Ibid.*

⁶⁸ Priestley (2009).

⁶⁹ Thompson (2008).

⁷⁰ Isaac (2010), Phillips (2010).

⁷¹ Reed (2010).

⁷² Pelton (2006), p. 277.

⁷³ Miller (2007), p. 177.

⁷⁴ Newman/Hammond (2006), Miller (2007), p. 188.

⁷⁵ Phillips (2010).

constraints, these structures shape the expectations of market participants and, thereby, strongly influence PSC competition.

Section Three: Porter's Five Forces I: Rivalry

Rivalry describes the competitive pressure that companies in a market exert on one another and it is, therefore, closest to the literature's conceptualization of competition. However, Porter advocates a broader understanding of rivalry that encompasses a range of actions companies may take, namely 'price competition, advertising battles, product introductions, and increased customer services',⁷⁶ and structural factors that increase rivalry.

Actions Indicating Rivalry

Even within this wider range of actions and allowing for differences between private and public sector demand, PSCs seemingly take few actions indicative of intense rivalry. With respect to private sector demand, PSCs are essentially competing to 'get in the same room with the client',⁷⁷ i.e. to establish a relationship with a client's corporate security manager. There is little conventional advertising⁷⁸ and, given that customers can often only describe the function a product fulfils not its specific name, it seems that product branding has little impact in the PSI.⁷⁹ Additional customer services are an important factor, but interviews suggest that they are used to increase revenue from existing contractual relationships, rather than to attract new clients⁸⁰ - a practice many clients find irksome.⁸¹ Finally, price competition is limited, because security, as a product, does not lend itself to low-cost strategies. Clients engage PSCs in part as 'reassurance' to reduce their reputational and liability risk in case of an incident.⁸² Choosing a PSC with a low-cost strategy could cause the client in question to appear "cheap" on security, increasing their exposure to reputational and liability risks.⁸³

⁷⁶ Porter (1980), p. 17.

⁷⁷ Phillips (2010), Worcester (2009).

⁷⁸ Willis-Fleming (2009), Legge-Bourke (2010).

⁷⁹ Sorge (2009), Schenz (2009), Forbes (2007), Marshall (2011).

⁸⁰ Willis-Fleming (2009), Thompson (2008).

⁸¹ Sorge (2009), Ashwell (2008).

⁸² Marshall (2011).

⁸³ Worcester (2009).

With respect to public sector demand, PSCs compete for publicly tendered contracts in an anonymised procurement process. Thus, advertisements, product branding and additional customer services have little impact on competition for public sector demand. Lobbying is believed to be prevalent in the PSI,⁸⁴ but it is a poor indicator for intense rivalry. *Aegis'* hiring of the former British High-Commissioner Paul Boateng⁸⁵ and *Blackwater's* hiring of *Burson-Marsteller* after the Nisoor Square incident⁸⁶ suggest that PSCs may use lobbying primarily to influence regulatory efforts and address legal challenges rather than to gain a competitive advantage in the tender process. Finally, PSC representatives consider public sector demand to be increasingly price sensitive and complain about the public sector's focus on pricing rather than a company's reputation and ability.⁸⁷

However, there are several reasons why the industry's claims about the intensity of public sector price sensitivity and resulting intense price competition is questionable. For one, the evidence from Iraq and Afghanistan suggests that cost-efficiency was often a secondary concern to force protection and mission success.⁸⁸ The US government, for example, expected to award reconstruction contracts in Iraq at a rate of twenty-five contracts in the first two months, rather than the usual ninety days per contract, making effective cost-control virtually impossible.⁸⁹ Secondly, unlike companies, states cannot as easily "cut their losses" and abandon operations if the cost of security increases. This and the lack of public sector alternatives to protect government institutions in Iraq and Afghanistan greatly impeded cost-efficient contracting for PSC services.⁹⁰ Finally, the alleged public sector price sensitivity has yet to change how PSCs conduct their business. With the exception of *Blackwater*, which advertises its use of fixed-price contracts,⁹¹ most PSCs, especially in the UK, rely on their experience and service quality, rather than pricing to attract customers.⁹²

⁸⁴ Isenberg (2010 IV). Pelton (2006), p. 277.

⁸⁵ Prior to working for Aegis, Mr. Boateng had lobbied the South African government for more lenient PSC regulation (Oliver (2009)).

⁸⁶ Weinberger (2007). See also Scahill (2010).

⁸⁷ Isaacs (2010), Richard Fenning in Spear's Wealth Management Survey (2008 IV), Phillips (2010).

⁸⁸ See Chapter 2 Section 6. The WPPs explicitly attributes greater importance to technical merit than financial considerations (Elsea *et al* (2008), p. 7).

⁸⁹ Miller (2006), p. 112. For Afghanistan, see Stafford (2011).

⁹⁰ Miller (2006), 172. See also Bremer/McConnell (2006), pp. 356-357). On the DoS's dependence on PSCs, see Matthews (2010).

⁹¹ Isenberg (2010 V).

⁹² Isaacs (2010), Legge-Bourke (2010), Norman (2010).

Indeed, most PSCs consider *Blackwater's* pricing strategy to be unsuccessful,⁹³ indicating that the public sector is not sufficiently price sensitive for such a strategy to succeed.⁹⁴

Hence, PSCs take few actions that indicate intense rivalry. Indeed, in interviews, PSC representatives were reluctant to criticize their competitors. This amicability is attributable to the personal relationships that pervade especially the UK PSI⁹⁵ and the high level of cooperation required. Prime contractors often rely on other PSCs as subcontractors to service large public sector contracts⁹⁶ and small PSCs occasionally pass on contracts to larger competitors and *vice versa*.⁹⁷ As a result, the actions PSCs take are at best a weak source of rivalry and, thus, competition.

Structural Factors

However, rivalry is not limited to the actions PSCs take, but, according to Porter, can also be a result of structural factors – five of which can be found in the PSI.⁹⁸ First, ‘numerous and equally balanced competitors’ can exacerbate rivalry in an industry, as no company is dominant enough to impose discipline in the market.⁹⁹ While company size clearly varies in the PSI, newly created companies have won contracts against much larger, established PSCs, e.g. when *Aegis* won the ROC contract against *Dyncorp*.¹⁰⁰ Moreover, small companies poached employees from established PSCs for the very contracts they won against them.¹⁰¹ This suggests that size does not translate into the ability to control competitors in the PSI.

Secondly, ‘slow market growth’ increases rivalry, as companies have to compete for their rivals’ clients to grow their business.¹⁰² While the recent decline in public sector demand is widely recognized,¹⁰³ the financial crisis precipitated a similar, largely overlooked decrease in private sector demand,¹⁰⁴ especially in industries that had previously been important PSC

⁹³ Pelton (2006), p. 292, Isenberg (2010 V).

⁹⁴ Worcester (2008), Phillips (2010).

⁹⁵ Norman (2010), Gray (2005). Also, see Chapter Three.

⁹⁶ Edinburgh International provides services to Triple Canopy under the WPPS (Phillips (2010)).

⁹⁷ *CRG* shares such a relationship with *red24* (Thompson (2008)) and *EI* (Marshall (2011)). *Erinys* worked with *Rubicon* on its pipeline security contract in Iraq (Pallister (2003)).

⁹⁸ The structural factors deemed inapplicable to the PSI are (1) ‘High Fixed or Storage Costs’, (2) ‘Capacity Augmented in Large Increments’ and (3) ‘High Exit Barriers’ (Porter (1998), pp. 19-22).

⁹⁹ Porter (1998), p. 18.

¹⁰⁰ Pelton (2006), p. 278.

¹⁰¹ Miller (2006), p. 178.

¹⁰² *Ibid.* Grundy (2006), pp. 216-217, Spence (1979), p. 14.

¹⁰³ Donald (2006 II), p. 17, Bennett (2011).

¹⁰⁴ Jake Allen in COR (2009).

customers, namely banking, insurance and oil companies.¹⁰⁵ Interviews suggest that, as a result, clients' security budgets and appetite for investments in high-risk environments shrank,¹⁰⁶ causing profit margins to decline across the PSI. To "keep the lights on", i.e. to at least cover their fixed costs, PSCs have to sell their services in greater volumes, which precipitates greater rivalry in the PSI.¹⁰⁷

Thirdly, a 'lack of differentiation or switching costs' promotes rivalry by making it less costly for clients to switch providers. While diversification into areas like forensics, data security and information services has made PSCs less dependent on the provision of armed security, they have generally remained 'Jacks of all Trades',¹⁰⁸ unwilling to carve out a distinct niche for themselves. This lack of specialization is partly attributable to their clients' expectation that PSCs are "one-stop solutions" for their security needs.¹⁰⁹ Moreover, the prevalence of subcontractors in the PSI also stymies specialization, because they allow PSCs to maintain a broad service portfolio at relatively low costs: Subcontractors, unlike in-house assets, require no upfront investments and they eliminate the risk of capacity underutilization.¹¹⁰

Since PSCs services are not significantly differentiated, it is easy for customers to switch from one provider to another. Likewise, clients do not face significant switching costs, at least not in financial terms, because sunk costs and long-term contracts are uncommon in the PSI.¹¹¹ While the next chapter will discuss the impact of personal relationships on the decision to switch providers, the prevailing attitude among corporate security managers towards switching costs seems to be '[i]f you are unhappy with something, you can switch [to another PSC]. There is really no reason not to'.¹¹²

Finally, 'diverse competitors' and 'high-strategic stakes' exacerbate rivalry, as they disconnect PSCs from the need to turn a profit.¹¹³ With respect to diverse competitors, *Blackwater's* critics argue that the "deep pockets" and political convictions of its owner, Eric

¹⁰⁵ The crisis caused the oil price to plummet from \$145 a barrel in July 2008 to \$30 a barrel in December 2008.

¹⁰⁶ Worcester (2009), Claridge (2010), Norman (2010), Legge-Bourke (2010)).

¹⁰⁷ Clissit (2010), Phillips (2010).

¹⁰⁸ Priestley (2009). See also Donald (2006 II), p. 52, Claridge (2010).

¹⁰⁹ Donald (2006 II), p. 61, Marshall (2011).

¹¹⁰ Hugh Martin in Spear's Wealth Management Survey (2008 V).

¹¹¹ Contracts in the PSI rarely exceed one year (Thompson (2008), Marshall (2011)).

¹¹² Marshall (2011).

¹¹³ Porter (1998), p. 19.

Price, allow it to compete for contracts at a loss.¹¹⁴ Recently, a similar concern has been voiced following the entrance of large conglomerates into the UK PSI, especially after *G4S'* purchase of *ArmorGroup*.¹¹⁵ While these concerns about the competitive practices of *Blackwater* and *G4S* have yet to be substantiated, their mere existence puts pressure on PSCs to fortify their market position, which likely intensifies their rivalry.

As to high strategic stakes, success in an industry may have value to a company beyond its economic performance. This is clearly the case for PSCs with respect to the provision of armed security, as it gives them credibility and initiates a relationship to the client that can then be used to sell further services.¹¹⁶ Its strategic importance further is evident in the inability of some PSCs – *CRG* is a frequently cited example¹¹⁷ – to abandon the provision of armed security when restructuring their service portfolio, despite its reputational risks and decreasing profit margin.¹¹⁸

Conclusion

While the behaviour of PSCs does not indicate intense rivalry, the aforementioned structural factors do. The fact that PSC behaviour has not fully adapted to these structural conditions raises two questions: What factors have caused PSCs not to develop intense rivalry and what are the industry's prospects to withstand this structural "pull" towards greater rivalry? While the second question will be addressed in the concluding chapter of this thesis, a partial answer to the first question lies in the overall argument this thesis proposes: The social context, in which PSCs are embedded, curbs their desire for financial profit, specifically the relationships within PSCs, among PSCs and between PSCs and their clients. However, the extent to which contextual factors can exert influence on PSC behaviour is also a function of market conditions in the PSI. This alludes to Chapter One's bell-curve model of competition in the market for PSC services, which Chapter Three expanded on by placing corporate survival, not profit-maximisation at the heart of PSCs' motivation. The bell-curve model suggested that at the extremes, where there is absolute competition or none at all, social context matters little. On the fringes, where competition is either very strong or very weak,

¹¹⁴ Pelton (2006), p. 292.

¹¹⁵ Fortson (2008).

¹¹⁶ Claridge (2010). Customers often enter the PSI to address a need for armed security and remain loyal to their initial security provider (Marshall (2011), Schenz (2009), Sorge (2009)).

¹¹⁷ Worcester (2009), Clissitt (2010), Priestley (2009).

¹¹⁸ Bennett (2010).

its effect is low. In the middle, however, PSCs are neither unrestricted in their behavioural choices nor forced to pursue opportunistic behaviour just to survive. This section's analysis of rivalry places competition in the UK PSI squarely in the middle of the bell-curve. However, competition is not limited to rivalry alone, but a function of five forces. The following sections will discuss whether the remaining forces confirm that competition in the PSI is neither too strong nor too weak to make the influence of the social context immaterial – starting with the threat of new entrants.

Section Four: Porter's Five Forces II: New Entrants

While rivalry describes the current level of competition in an industry, the threat of new entrants focuses on an industry's future competitive pressure. If a market becomes more lucrative, it attracts new competitors, whose market-entry puts pressure on existing companies.¹¹⁹ Thus, even an industry that is populated by few companies can be subject to high competitive pressure, as the threat of new entrants keeps them in check. However, if significant barriers to entry exist, new entrants are deterred, leaving established competitors to be free to behave as they please. Hence, the ease of market entry is an important factor in determining an industry's competitive pressure.¹²⁰ This section argues that the threat of new entrants is high in the PSI.

Barriers to Entry

Some of the barriers to entry Porter identifies are not applicable to the PSI. For instance, technological advantages or proprietary rights play no significant role in the provision of armed security¹²¹ and neither government subsidies nor licenses pose a significant impediment to market-entry.¹²² Likewise, interviews suggest that the provision of armed security requires no raw materials except manpower, which PSC representatives seem to be right in pointing out that it is abundantly available.¹²³ Still, three barriers to entry are worthy

¹¹⁹ Porter (1998), p. 7.

¹²⁰ *Ibid.*

¹²¹ Technological advantages may be applicable to PSCs diversified activities, such as forensics (e.g. *CRG* (Worcester (2008)), integrated systems (*Olive* (Combes (2009))) and ordnance disposal (*Page Security* (Isaacs (2010))).

¹²² The Afghan government's plans to tighten its licensing laws are a possible future exception (Rubin (2010)).

¹²³ Legge-Bourke (2010), Claridge (2010). See also Section 7.

of closer consideration, namely economies of scale, product differentiation and favourable access.¹²⁴

Economies of scale: Economies of scale constitute a barrier to entry, because new entrants either have to enter the market on par with existing competitors, which requires costly up-front investments, or they compete at a disadvantage.¹²⁵ However, their presence in the PSI is questionable.¹²⁶ Increased volume may reduce the costs of credit and of equipment purchases, but “diminishing returns on scale” outweigh these benefits.¹²⁷ Interviews specifically named the greater need for managerial oversight and weaker personal relationships as a possible downside to an increased production of security services.¹²⁸ Porter proposes that ‘joint costs’ and ‘intangible assets’, which can be shared across several products at no additional costs, constitute a further source of economies of scale.¹²⁹ One such intangible asset may be the information PSCs gather to assess the security situation in a country, which they can re-sell as information products.¹³⁰ However, transforming an in-house analysis into an information product incurs costs, as the information needs to be processed for external consumption.¹³¹ Moreover, “recycling” information risks cannibalizing the more lucrative trade in security consulting services.¹³² Sharing the joint costs of divisions like HR, legal and sales across different products may also offer economies of scale, but they are likely to be limited in the PSI, as the resulting synergies are limited by the different requirements of each product.¹³³ The benefits PSC derive from joint costs and intangible assets are therefore not significant enough to amount to economies of scale.

Product differentiation: As previously mentioned, PSCs have not succeeded in differentiating their products sufficiently to attract significant customer loyalty.¹³⁴ In interviews, few clients could name the specific product they purchase.¹³⁵ Interviews suggest that this is partly owed to PSCs not advertising their services as specific products, but, instead, focus on their ability

¹²⁴ Porter (1998), pp. 7-11.

¹²⁵ *Ibid.*

¹²⁶ Jennings makes the same claim, but does not elaborate on it (Jennings (2006), p. 19).

¹²⁷ Wernerfelt (1984), p. 171, Bannock *et al* (2003), p. 100.

¹²⁸ Priestley (2009), Claridge (2010), Thompson (2008).

¹²⁹ Porter (1998), pp. 8-9.

¹³⁰ Brown (2008), Niblett (2008). See also *Blackwater's* unsuccessful attempt to use its Iraq experience to manufacture APC (Preyss (2008), Osborn/Curtis (2008)).

¹³¹ Lewry (2009).

¹³² Schenz (2008).

¹³³ Willis-Fleming (2008), Lewry (2009).

¹³⁴ See Section Three.

¹³⁵ Sorge (2009), Schenz (2009), Forbes (2007), Marshall (2011).

to meet their clients' problems.¹³⁶ Still, personal relationships seem to have produced such strong customer loyalties in private sector clients¹³⁷ that the investments needed to overcome them arguably constitute a barrier to entry.¹³⁸ Meanwhile, customer loyalties have little effect on public sector demand. A case in point is *CRG*, to whom the FCO maintained a close relationship at the beginning of the Iraq War,¹³⁹ before cost-efficiency considerations caused it to switch providers.¹⁴⁰ Indeed, the companies associated with successfully entering the PSI in recent years – *Aegis*, *Triple Canopy* and *Blackwater* – all primarily cater to public sector clients.¹⁴¹ Furthermore, the PSI does not lend itself to the sort of investments commonly associated with overcoming customer loyalty, i.e. in R&D, plants, advertisement and equipment.¹⁴² Rather than a handicap for new entrants anxious to overcome customer loyalty to established companies, the lack of investment opportunities allows new entrants to maintain a low overhead and to undercut the prices offered by their more established competitors.¹⁴³ Finally, customer loyalty is primarily centred on people rather than companies or brands.¹⁴⁴ New entrants can therefore poach employees from existing PSCs, who, in turn, can often take loyal customers with them to their new venture.¹⁴⁵ Likewise, a change of personnel in the client's security management can end even well-established relationships,¹⁴⁶ which suggests that established competitors have a hard time defending their customer base. Therefore, while customer loyalty cannot be entirely dismissed as a barrier to entry, its effect is limited and seemingly surmountable.

Access to distribution channels: Exclusive access to a distribution channel by an established company can make it hard for subsequent entrants to compete in a market. With respect to public sector demand, preferred vendor status, e.g. through the US GSA schedule,¹⁴⁷ and long-term "indefinite delivery/indefinite quantity" contracts, e.g. the *WPPS*, constitute two

¹³⁶ Phillips (2010), Beese (2011), Claridge (2010).

¹³⁷ Ashwell (2008), Priestley (2009), Marshall (2011).

¹³⁸ Porter (1998), p. 9.

¹³⁹ Worcester (2005).

¹⁴⁰ Phillips (2010).

¹⁴¹ Spicer (2009), Falconer/Schulman (2008), Bergner (2005).

¹⁴² Spence (1979), p. 6. See Section 7.

¹⁴³ Clissitt (2010), Phillips (2010).

¹⁴⁴ A notable exception is Hiscox, which uses its exclusive access to CRG's services for advertisement purposes (Hiscox (2010), Ashwell (2008)).

¹⁴⁵ Thompson (2008).

¹⁴⁶ Priestley (2009), Cook (2006), Kroha (2009).

¹⁴⁷ If a PSC is included in the GSA schedule, government institutions can contract with it through a simplified procurement process.

possible “bottle-necks”.¹⁴⁸ However, with *Aegis* and *Triple Canopy*, two relatively new companies got onto the GSA schedule and won the Matrix and the WPPS contracts respectively, which suggests that access to these distribution channels has not obstructed market entry in the past. Yet, interviews suggest that increases in the complexity and costs of competing for large government contracts, in case of the WPPS allegedly reaching \$3-10 million, make access to these distribution channels increasingly difficult.¹⁴⁹ With respect to private sector demand, the cooperation between established PSCs and insurance companies could constitute a barrier for new entrants.¹⁵⁰ Such cooperation offers a relatively steady revenue stream, as insurance companies encourage their clients to use their partner in the PSI by reducing their clients’ premium.¹⁵¹ Moreover, through this cooperation, PSCs are exposed to prospective clients¹⁵² and they derive reputational benefits from the endorsement implicit in such cooperation.¹⁵³

However, it is questionable whether the advantages derived from such access will be large enough to constitute significant barriers to entry. New entrants that are precluded from winning large government contracts may still work on these contracts as subcontractors or provide security to companies under government contract and thus have access to a significant share of the market for PSC services in Iraq and Afghanistan.¹⁵⁴ With respect to private sector demand, the effect of inter-industry cooperation is easily overstated. Interviews suggest that, for a variety of reasons, clients use a PSC other than the one they are familiar with through their insurer: Clients are either concerned about a possible conflict of interest,¹⁵⁵ they consider the PSC provided by the insurer as a ‘back-up’ option,¹⁵⁶ their security manager already has a personal relationship to another PSC¹⁵⁷ or because insurance cover and security services are purchased by different divisions within the client company.¹⁵⁸

¹⁴⁸ Elsea *et al* (2008), p. 7.

¹⁴⁹ Phillips (2010).

¹⁵⁰ Priestley (2009). Examples for such cooperation are *Hiscox* and *CRG* (Ashwell (2008)), *AON* and *Janusian* (Janusian (2010)), *HSBC* and *red24* (Thompson (2008)) and *GWP* and *Olive/ArmorGroup* (Spear’s Wealth Management Survey (2008)).

¹⁵¹ Donald (2006 II), p. 28, Ashwell (2008).

¹⁵² Thompson (2008), Ashwell (2008).

¹⁵³ Priestley (2009), Ashwell (2008), Willcocks (2008).

¹⁵⁴ Shepherd (2008), p. 116, Isenberg (2009), p. 26.

¹⁵⁵ Priestley (2009).

¹⁵⁶ Marshall (2011).

¹⁵⁷ Priestley (2009), Schenz (2009).

¹⁵⁸ Sorge (2009), Forbes (2007).

Therefore, while access to distribution channels provides established PSCs with some advantages, it certainly does not amount to a prohibitive barrier to entry.

Conclusion

In conclusion, barriers to entry have been relatively low in the PSI. Indeed, new entrants were largely responsible for the shrinkage in profit margins for armed security services, in response to which established UK PSCs started to move away from ‘just putting “boots on the ground”’.¹⁵⁹ Instead, they promulgate a ‘more analytical approach to security’, which combines the armed security with consultancy and information services¹⁶⁰ and which new entrants cannot easily copy. Similarly, the industry’s efforts to self-regulate are partly motivated by the influence such regulation would afford over new entrants to the PSI.¹⁶¹

While barriers to entry have been low in the past, this may change. Efforts to erect such barriers, e.g. introducing costly regulation, and the stagnating growth in the PSI make it harder for companies to enter the PSI. An even more salient factor is the increasing complexity and costs involved in competing for government contracts. Unfortunately, those calling for greater accountability of PSCs have yet to fully recognize the trade-off between the complexity of public sector contracting and the competitive pressure in the PSI. More complex selection and oversight procedures, for all their benefits, shrink the pool of applicants and, thereby, decrease the competitive pressure in the PSI.

Ultimately, this may cause the PSI to split into a two-tier system: A small group of large PSCs corners the market for government contracts, while a much larger group of companies is limited to competing for smaller private sector contracts. A 2009 SIGIR audit report suggests that this may have already happened: Of the estimated 5.9 billion spent on PSC services by the DoD, DoS and USAID in Iraq from 2003-2008, 3.2 billion were earned by just four out of 93 PSCs.¹⁶² Moreover, large public sector-focused PSCs may use their profits from public sector contracts to push into the market for private sector clients.¹⁶³ This could eventually force smaller PSCs out of the market and further degrade the competitive pressure.

¹⁵⁹ Donald (2006 II), p. 47.

¹⁶⁰ Willis-Fleming (2008).

¹⁶¹ Cockayne *et al* (2008), p. 24, Schulz (2008).

¹⁶² SIGIR (2009), p. 24ff.

¹⁶³ Aegis’ acquisition of *Rubicon* is arguably a case in point (Boxell (2005)). Also, *Blackwater* created *Greystone* to pursue private sector clients (Burgess in Falconer/Schulman (2008)).

At least for the moment, however, the threat of new entrants seems to be high enough to suggest that the resulting competitive pressure in the PSI is neither too high nor too low to obviate the influence of the social context on PSC behaviour. This section's analysis also suggests that the behaviour of customers, e.g. the complexity of government contracting, influences the behaviour of individual PSCs. Interestingly, this point is even more salient with respect to the third of the five forces, the threat of substitutes.

Section Five: Porter's Five Forces III: Substitutes

Companies do not only experience intra-industry competition, but their market power is also limited by competition from other industries: Faced with rising prices, customers may switch to a substitute product.¹⁶⁴ The oft-cited example of butter and margarine is somewhat misleading,¹⁶⁵ as correctly identifying a substitute product can often be very difficult.¹⁶⁶ Customers may accept significant switching costs and inferior products if the difference in price between the product and its substitute is substantial enough. Applied to the PSI, this means that substitutes may encompass not just other security providers, but also the use of alternative strategies for addressing security problems.

This section will argue that the threat of substitutes affects public and private sector demand differently. With respect to the former, the threat of substitutes has been low, but there is considerable potential for establishing an effective public sector substitute. With respect to private sector demand, substitutes have been available, but their use is increasingly problematic.

Public Sector Substitutes

Public sector clients are more limited in their choice of substitutes for PSC services than their private sector counterparts. For instance, a state cannot easily abandon its presence in a country due to concerns about the price of PSC services, as this would damage its diplomatic relations. Likewise, legal reasons and political costs make it inadvisable to send diplomats into a conflict zone without any protection. Hence, the most frequently advocated substitute is public sector security provision, i.e. the use of military, police and diplomatic security

¹⁶⁴ Porter (1998), p. 23.

¹⁶⁵ Anderton (2000), p. 63, Gwatney *et al* (2009), p. 62.

¹⁶⁶ Porter (1998), p. 23.

assets instead of PSC.¹⁶⁷ Yet, there are considerable concerns about the feasibility of replacing PSC with public sector providers in Iraq and Afghanistan.¹⁶⁸ A GAO study, for example, found that replacing PSCs would entail higher costs and require assets that are not currently available.¹⁶⁹ Leaving aside the respective merits of both arguments for the moment, they fail to recognize that, to be a credible substitute, public sector security provision need not be able to replace PSCs entirely. While a limited public sector substitute could do little against concerted misbehaviour by multiple companies, the ability to temporarily replace individual companies with a public sector security provider would likely provide PSCs with a sufficiently strong incentive not to shirk.

Alas, despite its considerable potential benefits, such a credible public sector substitute has yet to be established. One problem has been that troop levels in Iraq were too low to assure even a basic level of security in Baghdad,¹⁷⁰ let alone take over the guarding of strategic infrastructure.¹⁷¹ Furthermore, the 2004 attacks on the CPA in Najaf and Kut made it clear that neither the Iraqi security forces nor parts of the multinational contingent of the Coalition are reliable security providers.¹⁷² Another problem has been the lack of political pressure for establishing a private sector substitute. While the GAO repeatedly highlighted the lack of planning involved in the public sector's use of PSCs, its recommendations focused more on oversight and accountability and less on contingency planning.¹⁷³ While plans are in place at an institutional level to address interruptions to the delivery of PSC services,¹⁷⁴ the DoS' recent inability to execute its decision to replace *ArmorGroup* as its security provider for the US Embassy in Kabul suggests that these plans hardly constitute a public sector substitute.¹⁷⁵

¹⁶⁷ Schakowsky (2010), Singer (2007 II), p. 4, Shepherd (2008), p. 331.

¹⁶⁸ Higgins (2011), Kerr (2008), p. 18, Greg Starr in Cotton *et al* (2010), pp. 57-58, Ambassador Ryan Crocker in Zagorkin/Bennett (2007).

¹⁶⁹ GAO (2010), p. 5ff.

¹⁷⁰ Bremer (2006), pp. 356-357.

¹⁷¹ Miller (2006), p. 172.

¹⁷² Etherington (2005), p. 190ff, Bremer (2006), p. 327, Stewart (2007), 371ff, Wilson (2004), Ricks (2009), p. 268.

¹⁷³ GAO (2005, 2006, 2008 II).

¹⁷⁴ Higgins (2011).

¹⁷⁵ Schulmann (2011).

Private Sector Substitutes

A public sector substitute would be unavailable to most private sector clients. Instead, they can employ strategies inaccessible to the public sector as substitutes for PSC services. First, private sector clients can purchase security services from the local military or police or pay off the parties that pose a risk to the client's operations.¹⁷⁶ The Nigerian government, for example, allows companies to purchase armed security services from the Nigerian police,¹⁷⁷ while, in Afghanistan, several companies have admitted to bribing the Taliban.¹⁷⁸ Secondly, clients can internalize the risk of operating in an insecure environment, e.g. by sending their employees in harm's way without purchasing adequate protection. Interviews suggest that this occurs more frequently than companies care to admit, especially in states that lack a well-established PSI and in industries without a history of operating in high-risk environments.¹⁷⁹ Indeed, many states inadvertently encourage this behaviour by socializing the costs of operating in high-risk environments. German companies, for example, can rely on the government to negotiate and pay for the release of its kidnapped employees.¹⁸⁰ Alternatively, clients can internalize risks by using in-house security as a substitute for PSC services or they can opt to buy insurance cover instead of PSC services. Finally, private sector clients can decide to cease operating in a country. Indeed, several companies and NGOs opted not to fulfil their contracts in Iraq when the security situation deteriorated.¹⁸¹

While private sector clients may have a wider range of substitutes available to them, their use is increasingly problematic. By purchasing armed security from the local police or military or by paying off insurgents and warlords, companies can be held liable for the crimes these security providers commit. Indeed, *Shell* and *Coca-Cola* both had to defend themselves in US courts for actions undertaken by security providers in Nigeria and Colombia, respectively.¹⁸² By paying insurgents and warlords, companies may also provoke the ire of the local government and its allies.¹⁸³ Internalizing the risks of operating in high-risk

¹⁷⁶ Mehlum *et al* (2002), p. 450ff, Roston (2009).

¹⁷⁷ Abrahamson/Williams (2005 II), p. 11ff.

¹⁷⁸ Shalizi (2010).

¹⁷⁹ Worcester (2008), Stoppelkamp (2009), Saur in Corporate World (2009).

¹⁸⁰ Baldauf (2007).

¹⁸¹ Examples include *Siemens*, *GE* and *Interenergosservis* (Wilson (2004 II, Gebauer (2004)), *Care International* (Reid (2004)), *Oxfam* (Raymond (2004)), *Caritas* (Independent Catholic News (2004), the UN and the ICRC (The Economist (2003)), *World Vision* (ReliefWeb (2004)) and *Contrack* (Pelham (2004)).

¹⁸² See *Wiwa vs. Shell* (Goldhaber (2009) and *Sinaltrainal vs. Coca-Cola Company*.

¹⁸³ Zarak (2009), Mulrine (2010), Tierney (2010).

environments without adequate security is similarly problematic, because legal changes, especially the UK *Corporate Manslaughter Act* and the US *Sarbanes and Oxley Act*, have made it easier to hold companies liable for violating their duty of care *vis-à-vis* their employees.¹⁸⁴ Likewise, companies using in-house security can no longer shift liability to a PSC. Interviews have shown this to be a major reason for hiring PSCs – so much so that clients’ desire to ‘saddle them [PSCs] with all the risk’ is a contentious issue in contract negotiations.¹⁸⁵ Moreover, developing in-house assets with the necessary local knowledge is expensive, especially if clients maintain small presences in numerous countries.¹⁸⁶ Finally, PSCs’ exposure to a large variety of clients, security management strategies and conflict regions gives them an edge when it comes to innovation and developing best practices.¹⁸⁷ Relying on the public sector has also become decidedly less attractive, as states are increasingly eager to have corporations reimburse the costs of freeing a kidnapped employee.¹⁸⁸ Even substituting PSC services for insurance has its limits, as standard insurance policies often exclude conflict zones.¹⁸⁹ Indeed, many clients buy PSCs services to bring down their otherwise prohibitively expensive insurance rates.¹⁹⁰ More importantly, no legal defences, public sector substitutes nor insurance cover can mitigate the reputational risk involved in sending employees into a conflict zone without the necessary support. Therefore, private sector clients may be able to reduce their reliance on PSC services via internalization, but substituting them entirely would entail unacceptable costs and risks.

Finally, the costs involved in ceasing to operate in a country are significant. Investments, e.g. in infrastructure, research and licenses, are largely irredeemable, as are the costs directly associated with terminating an operation, i.e. moving personnel, selling off equipment and dissolving contracts. Terminating an operation also often entails a loss in revenue, as companies cannot shift their assets seamlessly to another, equally lucrative use. Finally, leaving a country means losing preferred access to markets, raw materials and the good-will of customers, suppliers and local authorities. It is inevitably an admission of defeat that may

¹⁸⁴ Bill Waite in Spear’s Wealth Management Survey (2008 III), Hugh Martin in Spear’s Wealth Management Survey (2008 V).

¹⁸⁵ Phillips (2010). See also Claridge (2010) Isaacs (2010), Norman (2010).

¹⁸⁶ Schenz (2009), Sorge (2009).

¹⁸⁷ Marshall (2011).

¹⁸⁸ Carstens (2009).

¹⁸⁹ Möchel/Holley-Spiess (2008).

¹⁹⁰ Lloyds (2011), p. 11.

entail substantial reputational costs. Leaving a country is, therefore, a measure of last resort not a substitute for PSC services.

Conclusion

So far, there is no obvious substitute available to replace PSC services entirely. Still, private sector clients can limit their use of PSC services through insurance, in-house security solutions and by internalizing risk, insofar as they are willing to bear the resulting costs and risks. Likewise, public sector clients can use public sector security forces to temporarily reduce their reliance on PSCs. As this section has shown, even a limited substitute can have a significant impact on PSCs. Thus, while the competitive pressure of substitutes is not overwhelming, it is noticeable in the PSI.

Moreover, private and public sector clients could relatively easily increase the threat of substitutes. Developing a viable public sector substitute and increasing private sector clients' in-house security capacity would be an obvious, yet expensive remedy. Instead, a better usage of existing capacities, e.g. through improved contingency planning, may be more feasible. An important role in this may fall to reforming private and public sector procurement procedures. If clients concentrate on a single PSC as a "one-stop-solution" for their security needs, a limited substitute cannot hope to replace it even temporarily. Likewise, the industry's efforts to provide more complex, integrated security products that combine analysis, consultancy and provision of PSC services undermine the effectiveness of a limited substitute. If a client's security needs are instead split up into several smaller contracts that are held by different PSCs, a limited substitute has a greater chance to replace problematic companies. Also, for a limited substitute to be effective, security providers need to maintain a close relationship to the wider PSI to quickly find a permanent replacement, once a public sector substitute had to be employed.

Section Six: Porter's Five Forces IV: The Bargaining Power Of Buyers

Proponents of security privatization often argue that PSCs are best controlled through their 'purse-strings'.¹⁹¹ Porter identifies seven factors that determine how much bargaining power customers have at their disposal. Three of these will not be discussed in greater detail: Unfortunately, the buyers of PSC services are too varied and their products too diverse to generalize about whether PSC services constitute a significant share of buyers' costs, if buyers earn low profits and if PSC services are unimportant for the buyers' own products.¹⁹² Likewise, the possibility of backward integration and standardized/undifferentiated products need not be discussed again,¹⁹³ as Section Five has already established the possibility of expanding public sector security forces and in-house security solutions, while Sections Three and Four showed that customers perceive PSC services as undifferentiated. This leaves two factors for closer examination: buyer concentration and the availability of information.

Buyer concentration

Where few, large buyers are confronted with numerous, small sellers, buyers can pressure sellers to lower their prices.¹⁹⁴ Crucially, this power derives not from the size of the buyer's demand, but from the asymmetric concentration of demand and supply. While demand for PSC services in Iraq and Afghanistan is largely publicly funded, public sector funds are not administered in a concentrated form, as government institutions purchase security individually.¹⁹⁵ Still, public sector contracts are large by industry standards and should give public sector clients considerable leverage over PSCs: In 2006, the FCO paid £41 million to *CRG* for mobile security services, which had a turnover of just £125.9 million.¹⁹⁶

In contrast, data about the dispersion of private sector demand is scarce, as PSC clients are generally reluctant and under no legal obligation to provide such information. Indeed, only one interviewee, Rafael Schenz of *Deutsche Bank*, provided any figures at all.¹⁹⁷ Still, interviews strongly suggest that private sector demand is fairly fragmented. However, the

¹⁹¹ Willcocks (2008).

¹⁹² Porter (1998), pp. 24-26.

¹⁹³ *Ibid.*, p. 25.

¹⁹⁴ *Ibid.*, p. 24. Economists refer to this as an oligopsony.

¹⁹⁵ Cotton *et al* (2010), p. 12ff, Spicer (2009). See Section Three.

¹⁹⁶ FCO (2007), Control Risks Holding (2006).

¹⁹⁷ *Deutsche Bank*'s in-house security spends a medium, double-digit amount of million Euros p.a. ('ein mittlerer, zweistelliger Millionenbetrag') and its costs for outsourced security are about 'ten times as high' (Schenz (2009)). However, only a fraction of that amount is spent on PSC services.

close personal relationships private sector clients form with PSCs creates an implicit promise for future business, which gives them market leverage, which exceeds their contracts' face-value. Moreover, some private sector clients engage in "seller selection", intentionally choosing a contractual partner for whom their business constitutes a significant share of their earnings.¹⁹⁸ Indeed, "seller selection" is partly responsible for the successful management walk-outs that led to the creation of companies like *Blue Hackle* and *Risk Advisory Group/Janusian*.¹⁹⁹ Eventually, such seller selection can bring about "extreme boutique companies", i.e. small PSCs that cater primarily to a single client.²⁰⁰ Such companies' experience of the market differs considerably from that of a diversified established PSC, as they face near monopsonic buyer concentration, even though their contracts may not be large by industry standards.

Overall, demand for PSCs services is fairly concentrated. However, the extent to which buyer concentration translates into market power depends on its application, which the next chapter will discuss by taking an in-depth look at how buyer power is applied in the quotidian relationship between PSCs and their clients.

The Availability of Information

Another factor that can impede the application of buyer power is the availability of information. According to Porter, detailed information about overall demand, market prices and the costs of inputs gives customers greater leverage over sellers.²⁰¹ Applied to the PSI, this means that well-informed clients can identify fairly priced products and reputable PSCs, pressure existing providers to match lower prices elsewhere and fend off egregious demands for price increases during re-negotiations. Moreover, well-informed customers can avoid low-ball bids and thereby reduce the risk of frictional re-negotiations, low-quality products and a breakdown in service provision.²⁰²

¹⁹⁸ Thompson (2008). Large PSCs are often perceived to be less attentive to their clients' needs than smaller ones (Sorge (2009), Schenz (2009), Forbes (2007)).

¹⁹⁹ Interestingly, both were the result of management walk-outs by *Kroll* employees (Spear's Wealth Management Survey (2008 III and VIII)).

²⁰⁰ Arguably, such arrangements already exist, as contractors intersperse working for established PSCs with periods of self-employment (Geddes (2006), p. 121, Lynch (2011) Edwards (2011)).

²⁰¹ Porter (1998), p. 26.

²⁰² A low-ball bid is a bid at a price below the break-even point. A company would submit such a bid hoping to make up for its initial losses by re-negotiating the contract later, at which point it is more expensive for the client to switch to a new provider. (Worcester (2008), Claridge (2010), Markusen (2003), p. 478).

However, the PSI presents several challenges when it comes to obtaining such information. For example, there is no centralized market place for PSC services that allows customers to compare prices. Interviews suggest that this is partly owed to the fact that PSC services are often tailor-made security solutions rather than off-the-shelf products.²⁰³ Also, while deficits in public sector contract oversight are well documented,²⁰⁴ relatively little is known about private sector contract management. Interviews, however, suggest that most private sector clients lack the resources, experience and the extensive market research.²⁰⁵

While the PSI may be a difficult information environment, buyers are taking actions to mitigate its challenges. By putting contracts up for public tender, the public sector procurement process creates a temporary market place, in which the information provided by PSCs as part of their bids establishes a market price. Private sector clients have created formal and informal networks, such as the *Arbeitsgemeinschaft für Sicherheit der Wirtschaft* (ASW) in Germany, aimed at sharing information.²⁰⁶ Finally, experience with private security contracting can cause information unavailability to become less of a concern: If a client does not know the going rate for a service, the price he/she paid in the past may be a good indicator.

Also, PSCs and their clients need not have conflicting interests when it comes to the availability of information. A PSC offering a product superior in quality or price, has a vested interest to inform potential customers about said product and the shortcomings of competitors. Also, its contested legitimacy arguably creates a need for the PSI to provide information to buyers and the wider public. Indeed, PSCs make substantial efforts to inform customers about their services and about corporate security and business continuity in general: they respond to media requests,²⁰⁷ publish news-letters, detailed case-studies and blogs²⁰⁸ and speak at conferences,²⁰⁹ etc.

²⁰³ Phillips (2010), Drake (2011), Thompson (2008).

²⁰⁴ For example, in April 2009, the Defence Contract Agency had filled only 38% of the required COR positions in Afghanistan. The lack of proper oversight is further exacerbated by the short rotations of contracting officers (Edward Harrington and Gary Motsek in CWC (2010 II)).

²⁰⁵ Marshall (2010), Schenz (2009), Sorge (2009).

²⁰⁶ Stoppelkamp (2009).

²⁰⁷ Bergner (2005), Yeoman (2003), Gilligan (1998). Erik Prince was even interviewed by Charlie Rose (Rose (2007)).

²⁰⁸ Risk Advisory Group in Spear's Wealth Management Survey (2008 III), Erinys International (2005), Fenning (2010).

²⁰⁹ CRG's Eric Westropp even addressed the Labour Party Conference (Westropp (2004)).

With the exception of the temporary market place created by public sector contracting procedures, these measures do not adequately resolve the PSI's information challenges. Information volunteered by PSCs is biased and therefore of limited value to their clients.²¹⁰ Information sharing is restricted by the fact that clients will not volunteer information that embarrasses them or exposes them to liability.²¹¹ Likewise, relying on experience rather than up-to-date information is problematic, as it can cause clients to miss changes in the industry or security environment. Finally, it is important to note that the availability of information does not assure its proper use. Flaws in contract management, e.g. insufficient staff, short rotations, a lack of institutional memory and problematic guidelines, can limit its usefulness. Hence, the availability of information cannot be definitively determined without analysing the relationship between PSCs and their clients, which Chapter Seven will discuss *en détail*.

Conclusion

Despite these concerns, especially public sector PSC clients hold significant bargaining power. The relatively strong concentration of public sector demand, the relatively weak concentration of supply for PSC services, the possibility of backward integration and the undifferentiated products PSCs provide give PSC clients considerable power. With respect to its public sector demand, the competitive pressure in the PSI is therefore neither too high nor too low to obviate the influence of the social context on PSC behaviour.

Unfortunately, changes in the PSI threaten to decrease the power of public sector customers. As previously mentioned, increasingly complex procurement procedures threaten to isolate government contracts from the PSI's full competitive pressure. Also, some PSCs have started to use vertical integration to gain a competitive advantage. Mergers and acquisitions, such as *G4S's* take-over of *ArmorGroup*, *Aegis's* acquisition of *Rubicon* and *Triple Canopy's* purchase of *Edinburgh International*, threaten to concentrate the supply for PSC services. The supply of PSC services is further consolidated by companies that abandon the pursuit of public sector contracts to focus instead on private sector clients²¹² – a behaviour Porter refers to as 'buyer selection'.²¹³ Hence, while its formal, anonymised procurement process may empower public sector clients in the short term, the size and

²¹⁰ See Erik Price's refusal to discuss *Blackwater's* profit with the Committee on Oversight and Government Reform (Sizemore (2007)).

²¹¹ Stoppelkamp (2010), Marshall (2010).

²¹² Willis-Fleming (2008), Clissit (2010). *Janusian* sold its Iraq business in 2007 (Janusian (2007)).

²¹³ Porter (1998), pp. 26-27.

complexity of the contract and the costs involved in competing for them increasingly diminish the bargaining power of buyers.

With respect to the buyer power of private sector clients, the resulting competitive pressure is likewise neither excessive nor too limited to influence PSC behaviour, yet it differs from the public sector. The lack of even a temporary centralized marketplace makes it harder for customers to compare prices, which causes price competition to be less intense. At the same time, PSCs have fewer incentives for supply-side concentration, which arguably makes the bargaining power of private sector clients more sustainable. An even more important factor in reducing supply-side competition and thereby making private sector buyer power sustainable is the prevalence of relational contracting between PSCs and their private sector clients. While a competitor can match a PSC's price and service quality, the personal relationship and the trust it produces cannot be easily reproduced. Hence, it seems that by desisting from using formal, anonymised contracting procedures, private sector buyer power and thus competition is less intense, but more sustainable compared to the public sector.

This conclusion reinforces a recurring theme: behavioural patterns – here the prevalence of relational contracting among private sector clients – influence how structural factors affect the behaviour of individual PSCs. However, by arguing that less intense competition may be beneficial for customers, this section also suggests, seemingly contrary to the PSC literature, that increased competition in the PSI is not necessarily beneficial and may even have negative implications – an idea that has been echoed in Chapter One's bell curve model and that will be revisited in the concluding section of this chapter. First, however, the discussion of Porter's FFF addresses the bargaining power of suppliers.

Section Seven: Porter's Five Forces V: Bargaining Power Of Suppliers

Porter argues that suppliers 'can exert bargaining power [...] in an industry by threatening to raise prices or reduce [...] quality'.²¹⁴ However, it is unclear which supplies are sufficiently important to the production of armed security to accrue significant bargaining power. While most PSCs have limited access to credit,²¹⁵ the provision of armed security is not capital-intensive,²¹⁶ as weaponry and equipment are generally plentifully available, relatively cheap and, in the latter case, often purchased by PSC employees themselves.²¹⁷ A possible exception are armoured vehicles, which are expensive, impossible to insure and difficult to import.²¹⁸ However, such vehicles are often provided or paid up-front by clients.²¹⁹ Alternatively, UK PSCs often use "soft-skinned" vehicles to blend in with the local population.²²⁰ Thus, the only sufficiently important input for the production of armed security is manpower.

Organized Labour

Porter argues that whether labour is in a position to exert bargaining power at an industry-wide level depends primarily on its 'degree of organization'.²²¹ Fortunately, from a PSC perspective, contractors are generally not unionized²²² and evidence for spontaneous organization is scarce. Indeed, there has only been one reported case of a threat of coordinated mass resignations: *CRG* faced an 'employee revolt' when it cut wages and benefits in Iraq in 2006.²²³ Work stoppages have occurred more frequently, but they are often attributable to conflicts between PSCs and their clients rather than their employees.²²⁴

A major obstacle to organized labour in the PSI lies in the heterogeneity of its workforce. A by-product of the internationalization of the PSI's workforce has been its increasing cultural and linguistic diversity.²²⁵ Reviews of DoS contracts found contractors to lack English

²¹⁴ Porter (1998), p. 27.

²¹⁵ *Blue Hackle* explicitly mentions its reliance on bank loans as a concern in its annual report (Blue Hackle (2005), p. 4)

²¹⁶ Phillips (2010), Tabarrok (2007).

²¹⁷ See Chapter 3 Section 3.

²¹⁸ Toyne Sewell (2011), Beese (2011). See also Fainaru (2008), p. 136.

²¹⁹ Shepherd (2008), p. 250, Low (2007), p. 19.

²²⁰ Chapter 3 Section 8.

²²¹ Porter (1998), p. 28.

²²² Higgins (2011). A noteworthy exception is G4S in Uganda (Ssenkabirwa (2009).

²²³ Worcester (2009). See also Chong/Beeston (2006), Isenberg (2009), pp. 86-87.

²²⁴ See, for example, Global's strike at the Baghdad International Airport (Finer (2006)).

²²⁵ Geddes (2005), pp. 48-49, Low (2007), p. 17.

language proficiency, suggesting that PSC employees no longer have a common language.²²⁶ Also, conflicting interests have emerged in the PSI's workforce: Threatened by its depreciative effect on wages, highly qualified expatriates have criticised the use of less-qualified TCN and local staff.²²⁷ Hence, the prospects of organized labour representing all PSC employees are slim.

Even within the different labour segments, the emergence of well-organized labour structures among highly qualified PSC employees appears to be an unlikely prospect. The prevalence of short-term contracts and the transferability of skills make it more likely that contractors will "vote with their feet" rather than chance a conflict with their employer, especially given their concerns about blackballing²²⁸ and their relatively short work life in the PSI: Contractors enter the industry in their mid-30s and tend to leave it in their early 50s, while injury-related early retirement is not uncommon.²²⁹ Finally, the prior military life shared by many contractors does not offer a ready template for unionization²³⁰ and elements of military culture in the PSI, the "can do" attitude and the sense of duty seem to be incompatible with strong labour organisation. Thus, organized labour does not seem to be a significant source of bargaining power for highly qualified contractors.

For TCNs and local staff, a more ambivalent picture presents itself. Unionization has not played a significant role in either Iraq or Afghanistan, since PSCs are in a strong position *vis-à-vis* TCNs and local staff. TCNs and local staff are abundantly available, easily replaceable and, although TCN and local staff, at \$700-\$1,000 a month, earn considerably less than US/UK contractors, jobs in the PSI are highly sought after, as they are better compensated than almost all available alternatives.²³¹ Still, there is precedent for unionization among TCNs/local staff: Local staff at the US Embassy in Kampala successfully pressured *Armorgroup/G4S* to allow them to form a union.²³² Indeed, some aspects of the PSI in Iraq and Afghanistan would be conducive to organized labour, especially with respect to local staff. For example, to keep sourcing costs low and to assure cohesion, PSCs often recruit

²²⁶ Wiens (2010), DoS 2010, p. 25ff.

²²⁷ Ashcroft (2006), p. 57, Low (2007), pp. 16-17, Rob Krott in COR (2009 XII).

²²⁸ See Chapter 3 Section 4.

²²⁹ Matt Loe in COR (2009 VI), Ashcroft (2006), p. 38.

²³⁰ On unionization in the US and UK armed forces, see Caforio (2006), p. 313ff.

²³¹ Mmali (2009), Chatterjee (2004), p. 104ff.

²³² Ssenkabirwa (2009 II).

along cultural, military or tribal lines.²³³ The resulting “common ground” could provide a stepping stone for contractors to organize themselves. Also, local staff may be able to rely on existing legislation to facilitate unionization. In Uganda, contractors were able to overcome G4S’s opposition by arguing that preventing them from forming a union would violate the terms of their contract.²³⁴ Contractors may also find supporters of unionization in local governments eager to exert control over PSCs. Finally, the future prospects of unionization depend on the state of the economy in Iraq and Afghanistan: A prospering economy offers ample opportunities to earn a living outside the PSI, thus possibly forcing PSCs eager to attract qualified employees to accept unionization.

Scarce Varieties of Labour

An alternative source of bargaining power is the scarcity of labour. Alas, the supply of manpower seems to be robust, especially following the internationalization of the PSI.²³⁵ Nonetheless, Porter argues that a limited ‘supply of scarce varieties of labour’ can grant a specific group of employees significant bargaining power, even in an otherwise robust labour market.²³⁶ Said bargaining power is derived from three factors: the scarcity of the variety of labour, its inelastic supply and its importance for the production process.²³⁷

Tier-one operators from the UK and US meet the criteria of a scarce variety of labour, as the pool from which PSCs recruit them – retirees from elite Special Operations Force (SOF) units – is limited. Their scarcity is exacerbated by the fact that only states can expand the supply of tier-one operators, but find it difficult due to the scarcity of qualified applicants and the high training costs.²³⁸ Indeed, the supply of tier-one operators is likely to remain tight, as states have significantly increased their efforts to retain SOF personnel.²³⁹ Still, tier-one operators are valuable assets for PSCs. They are used to operating under conditions of hardship and physical insecurity and, unlike most ordinary soldiers, they are often trained in personal security provision during the course of their military career.²⁴⁰ Moreover, Spearin argues that SOF personnel offer PSCs significant promotional benefits when competing for

²³³ Ashcroft (2006), p. 132. See also Erinys (2005), p. 19, Stanger (2009), p. 101.

²³⁴ Ssenkabirwa (2009 II).

²³⁵ See Chapter Two, Section Six.

²³⁶ Porter (1998), p. 28.

²³⁷ *Ibid.*

²³⁸ The MoD struggles to find enough qualified recruits for the SAS (Harding (2011)).

²³⁹ Lardner (2007), Leake (2006).

²⁴⁰ The SAS has occasionally protected British diplomats (Chulov *et al* (2011)) and the royal family (Leppard (2006)).

clients.²⁴¹ In addition to possessing security clearance, which is required by some contracts,²⁴² tier-one operators offer clients an easily discernable indicator of otherwise hard-to-measure service quality.²⁴³ Thus, the training and elite status of SOF personnel can function as a regulatory surrogate, alleviating clients' concerns about the use of PSCs.²⁴⁴

Interviews, however, suggest that highly-qualified PSC employees believe their bargaining power has eroded in recent years.²⁴⁵ Indeed, some companies forced highly qualified contractors to accept cuts in their pay and benefits²⁴⁶ and replaced them with less-qualified TCN/local staff, especially on convoy and static security contracts.²⁴⁷ In addition to reducing the relative demand for tier-one contractors, PSCs increasingly used long-term contracts with lower annual salaries instead of short-term contracts with high day-rates.²⁴⁸ Such long-term contracts reduce labour mobility and, hence, bargaining power of highly qualified PSC employees. PSC representatives blame these developments primarily on clients exerting greater cost-pressure.²⁴⁹ Initially, the impact of these cost-saving measures on the demand for highly qualified contractors has been cushioned by the high overall demand for PSC services, which explains why some PSC employees still claim to make 'up to \$250,000' per year in a market that has seen an overall wage decline.²⁵⁰ However, interviews suggest that contractors are currently offered significantly lower wages.²⁵¹ Should said cost-pressure continue to rise and make it increasingly unprofitable for PSCs to offer high-quality security services – a scenario PSC representatives frequently augur²⁵² – the bargaining power of tier-one operators would see a further drastic decline.

However, such prophecies of doom postulating an unabated rise in cost-pressure seem premature. While another "bubble", i.e. a rapid and significant increase in demand for PSC services, is unlikely in the short and mid-term, an overall increase in demand would in

²⁴¹ Spearin (2006), p. 63.

²⁴² Lynch (2011), Low (2007), pp. 151-152. Acquiring a security clearance is time-consuming and very expensive. Indeed, one PSC representative testified that clearance costs amount to \$20,000-\$80,000 per employee (Isenberg (2010 V)).

²⁴³ Claridge (2010), Phillips (2010), Willis-Fleming (2008).

²⁴⁴ Spearin (2006), p. 63.

²⁴⁵ Krott in COR (2009 XII), Lynch (2011), Higgins (2011).

²⁴⁶ Chong/Beeston (2006), Shepherd (2008), pp. 266-267.

²⁴⁷ Worcester (2005), Claridge (2010).

²⁴⁸ Lynch (2011), Isenberg (2009 VIII), Higgins (2011).

²⁴⁹ Thompson (2008), Claridge (2010), Phillips (2010).

²⁵⁰ McPhedran (2010).

²⁵¹ Higgins (2011), Lynch (2011), Krott in COR XII (2009).

²⁵² Phillips (2010), Worcester (2008).

principle improve the bargaining power of highly qualified contractors, given the inelasticity of its supply. Moreover, the aforementioned pessimistic predictions underestimate the possibility of a resurgent interest in service quality. Such interest may result from concerns about exposure to reputational risk and liability, pressure from insurance companies and regulatory action in the form of industry-wide standards. Also, violent incidents or language and cultural problems with TCN/local security providers may motivate clients to reappraise the value of tier-one operators.²⁵³

Finally, PSCs are keen to avoid a “race to the bottom”, in which increasing price-pressure would force them to favour lower prices over service quality. PSCs’ efforts to foster competition focused on service quality has important implications for the relationship between PSCs and their highly-qualified contractors. Ordinarily, the two would be diametrically opposed, as an increase in bargaining power would benefit contractors at the expense of their employer and *vice versa*.²⁵⁴ Avoiding a “race to the bottom”, however, could benefit both PSCs and their highly-qualified employees. Since tier-one employees are an easy means to signal service quality, their bargaining power would increase in a market that values quality over price. Moreover, the use of tier-one operatives may support PSCs’ claims concerning the quality of their services and thus justify higher prices. Hence, barring another “bubble”, PSCs’ efforts to avoid a “race to the bottom” may be the best opportunity for highly-qualified contractors to improve their ailing bargaining power. Indeed, interviews with UK PSC representatives suggest that this is the main reason for the UK PSI’s ardent support for the BAPSC and its push for PSC regulation.²⁵⁵

Conclusion

Currently, the bargaining power of suppliers in the PSI seems to be a relatively weak source of competitive pressure. This section has argued that unionization among TCN/local staff and changes in customers’ demand for highly qualified contractors may provoke change in the future. However, it also highlighted various reasons for why strong organized labour is an unlikely prospect in the PSI and stressed that greater price pressure on the part of PSC clients may further diminish contractors’ bargaining power. It is therefore difficult to gauge

²⁵³ Hession (2007), Forbes (2007).

²⁵⁴ See Chapter Three.

²⁵⁵ Toyne-Sewell (2011), Phillips (2010).

the future strength of suppliers' bargaining power, as it is largely determined by market developments in general and customer choice in particular.

This observation matches conclusions reached in the previous sections: The extent to which structural factors, i.e. the overall demand for PSC services, the abundant availability of TCN/local staff, the scarcity of highly qualified contractors and the inelasticity of their supply, translate into competitive pressure is to a large extent determined by behavioural patterns, specifically by how customers procure PSC services. Combined with the bargaining power of buyers, it is increasingly evident that customers hold considerable power in the PSI. This challenges prevalent notions in the PSC literature that suggest that the market for PSC services offers clients little leverage to hold PSCs accountable. It also raises questions as to how customers apply their power in their relationship to PSCs.

The present section also touched upon another important issue: To avoid a "race to the bottom" and to establish quality-based competition, the PSI has to undergo significant changes. With respect to the bargaining power of suppliers, this means that PSCs have to build long-term relationships to their employees, invest more in training and limit the use of subcontractors to improve service quality and to develop a recognizable speciality. However, PSCs will not make the investments associated with these changes, if customers do not restrain the price-pressure they exert on PSCs in favour of a greater focus on service quality.

Conclusion

This chapter has clearly shown the prevalent conceptualization of competition in the PSI to be inadequate. In contrast to the PSC literature, this study argued that the competitive pressure in the market for PSC services is relatively high. The competitive pressure in this global market for PSC services is, of course, not the sole determinant of UK PSC behaviour. Labour and client relations as well as local variations in the legal environment in the UK also exert considerable influence on UK PSC decision-making. Still, interviews with UK PSC representatives confirm not only this chapter's overall assessment of the competitive

pressure in the market for PSC services, but also the significant extent to which UK PSC behaviour is influenced by it.²⁵⁶

Specifically, this chapter has shown that, while the actions UK PSCs take indicate cooperation rather than rivalry, structurally, the global market for armed security services encourages significant rivalry. More importantly, the barriers to entry in the PSI are low and the threat of substitutes is high. Finally, while the bargaining power of suppliers is limited, the bargaining power of customers is extensive and could easily be increased. Indeed, throughout this chapter, the way in which customers procure PSC services was shown to be a strong determinant of competitive pressure in the PSI.

This chapter's analysis of the competitive pressure in the PSI mainly relied on interviews with UK PSC representatives and their clients. This focus on primary data offers a deep understanding of how UK PSCs perceive their competitive environment rather than just an abstract measure of competition *per se*. The conclusions drawn from this interview data-focused analysis are supported by Chapter Two's account of the UK PSI from 2003-2009, which made intensive use of secondary sources, such as corporate and media reports and expert analysis.²⁵⁷ Together and in contrast to the prevalent literature, these two chapters make a strong case for the presence of substantial and increasing competitive pressure in the market for PSC services and its effect on UK PSC behaviour.

According to Burke *et al*, however, competition is not a goal in and of itself, but merely a means to an end, namely to discipline market participants.²⁵⁸ This raises two questions: (1) Are clients using their considerable power to influence PSC behaviour effectively, and (2) what can and should be done to improve competition in the PSI? Chapter Five will address the first question in its discussion of PSI client relations. Although the second question will be discussed *en détail* in the final chapter of this thesis, some initial conclusions about how competition in the PSI can be enhanced are highlighted here:

One important conclusion that the thesis in general and this chapter in particular advocates is the notion that increasing competitive pressure is not tantamount to improving

²⁵⁶ Beese (2006), Donald (2005), Claridge (2010), Phillips (2010), Isaacs (2010).

²⁵⁷ Likewise, this chapter's analysis of suppliers' bargaining power should be seen in conjunction with Chapter Three's discussion of the considerable power PSC employees exert in the PSI's labour relations.

²⁵⁸ Burke *et al* (1988), p. 85.

competition. Instead, excessive competitive pressure can force PSCs to engage in opportunistic behaviour that is not only contrary to their clients' interests, but also harms their long-term prospects as market participants. In terms of tangible measures, the way in which clients procure PSC services has emerged as one way for enhancing competition in the PSI. For instance, rather than few, large public sector contracts held by a small number of companies, a greater number of smaller contracts would sustain a greater number of companies in the PSI. This would provide an additional incentive for new entrants and would prevent the emergence of a market within a market, which limits competition. Also, the establishment of a credible public sector substitute would put additional pressure on the PSI as a whole. In addition to being employed as a temporary replacement for problematic PSCs, it could also compete against PSCs for government contracts, thereby providing a ceiling for price-increases.²⁵⁹ A further course of action would be to standardize PSC services, e.g. by coordinating DoS and FCO procurement procedures. If successful, such standardization could lead to the introduction of industry-wide quality standards. Finally, support for organized labour would provide a source of competitive pressure and an additional layer of oversight by addressing problems affecting employee welfare that could otherwise diminish service quality.

These changes in procurement practices are all the more important, because, as the last chapter of this thesis will show, developments in the PSI, to date, bode ill for the emergence of a stable industry with reliable providers of high-quality PSC services. Indeed, this chapter highlighted market developments – such as the slowing growth of the industry, the emergence of complex products and a growing concentration on the supply side – that have troublesome implications for clients. At the same time, the chapter highlighted the considerable power the market for PSC services imbues clients with and suggested ways in which it can be exploited to better influence PSC behaviour. Chapter Five will focus on how said power is applied in the relationship between PSCs and their clients.

²⁵⁹ This has successfully been used to introduce competition in the BBC and the NHS (Broadbent *et al* (2003), p. 174).

CHAPTER 5: THE RELATIONSHIP BETWEEN PSCs AND THEIR CUSTOMERS

Chapters Three and Four looked at the smallest and the largest aggregate, respectively, in which economic activity takes place in the UK PSI. While the former stressed the diversity of interests and the role of professionalism within UK PSCs, the latter noted the significant competitive pressure in the market for PSC services. Having thus considered PSC's motivation (CH3) and opportunity (CH4) separately, Chapter Five analyses the relationship between PSCs and their clients to determine how clients use the considerable power the market for private security services imbues them with to shape that relationship.

The Relationship between PSCs and their Clients

The notion that clients have the power to shape their relationship to PSCs may strike those familiar with the PSC literature as odd. Peter Singer, for example, is concerned that, once PSCs have obtained a contract, they can use the threat to suspend their service provision force their clients to renegotiate their contract and, thereby, increase their profit.¹ David Isenberg notes that, for a competitive market to have any effect, 'contracts must be subject to transparent bidding procedures, competing offers must be systematically compared and the performance of suppliers on the contract terms has to be closely monitored, and, if necessary, sanctioned' and that none of these characteristics are met in the PSI.² Allison Stanger states that '[w]hen contracts are awarded on the basis of old relationships, the promised cost savings tend to evaporate'.³ Finally, Alyson Bailes and Caroline Holmqvist suggest that '[i]n the absence of specific laws and rules tailored to the security and human rights impact of their operations, parliaments stand in the same relationship to them [PSCs] as they do to commercial enterprises in general - which is rarely if ever one of direct

¹ Singer in Pelton (2006), p. 108.

² Isenberg (2009), p. 23.

³ Stanger (2009), p. 122.

oversight and case-by-case enquiry'.⁴ Each of these authors discusses seemingly different issues. Singer is concerned about clients becoming dependent on PSCs, while Isenberg focuses on contracting procedures used to govern their relationship. Stanger draws attention to the detrimental effect personal relationships can have on economic action. Finally, Bailes and Holmqvist question whether market relationships can be used to address 'regulatory and normative issues'.⁵ What unites these critics, however, is that they identify the relationship between PSCs and their clients rather than the market *per se* as problematic.

This chapter argues that the literature's concerns about the relationship between PSCs and their clients are largely attributable to its specific use of the principal-agent (P/A) problem to understand client relations in the PSI. Contrary to the PSC literature, which characterizes the relationship between PSCs and their clients as antagonistic and offering abundant opportunities for shirking, this chapter argues that client relations at least in the UK PSI are characterized by closeness and trust. It also shows that UK PSCs are far more constrained in their actions than the PSC literature suggests – both as a result of their immediate relationship to their client and because of the networks that connect the two parties. Therefore, rather than a source of problems, this chapter argues that the relationship between PSCs and their clients offers various means for the client to PSC behaviour, many of which are superior to formal regulation, intrusive monitoring and severe sanctions, which the PSC literature seemingly favours. To argue its case, this chapter will highlight the important role “embeddedness”, “mutual dependency” and “relational contracting” play in PSI client relations.

Outline

Section one outlines the core tenets of the PSC literature's understanding of the P/A problem, especially those assumptions that are not inherent to the concept, on which it relies in its application of the P/A problem to client relations in the PSI. Section two through five argue that the PSC literature's specific use of the P/A problem is a poor fit for the UK PSI. They show that its emphasis on antagonistic client relations and on an abundance of opportunities to shirk is incompatible with the prevalence of long-term relationships

⁴ Bailes/Holmqvist (2007), p. 11.

⁵ *Ibid.*

(**Section two**), the influence of networks (**Section three**), the distribution of power (**Section four**) and the role of uncertainty in PSI client relations. Thus, while the P/A problem can *per se* be usefully applied to the relationship between PSCs and their clients, the literature's failure to adapt the concept to the realities of PSI yields a distorted picture of that relationship. **Section six** uses the insights gained in the preceding sections to discuss differences in private and public sector management of PSI client relations and to assess their respective success. Finally, the chapter will conclude by showing how the alternative view on PSC client relations this chapter has outlined helps to explain phenomena in the UK PSI that the PSCs literature arguably struggles to account for.

Section One: The P/A Problem in the PSI Literature

Chapter One already noted that the P/A problem constitutes an important theoretical underpinning of the literature's conceptualization of PSC behaviour in general and of the relationship between PSCs and their clients in particular.⁶ This section revisits the literature's use of the P/A problem and shows that it relies on two assumptions, which are not inherent to the P/A problem, namely (1) the antagonistic relationship between PSC and their clients, and (2) the abundance of opportunities for PSCs to shirk their duties due to hidden action, hidden information and their clients' inability to sanction PSC behaviour. This chapter concludes that the PSC literature's understanding of the P/A problem is mainly informed by its use in the public policy debate, rather than by a thorough engagement with the empirical evidence or with the appropriate economics literature.

Antagonistic Stance and Zero-sum Game

Chapter One defined the P/A problem as a situation where two actors are joined in a hierarchical relationship: The principal hires an agent to fulfil tasks on his/her behalf in exchange for compensation. The PSC literature characterizes PSCs (**agent**) and their clients (**principal**) as 'two self-interested parties', which occupy antagonistic positions within their contractual relationship.⁷ The mere possibility that principals' and agents' interests may overlap is not explicitly dismissed by the PSC literature. Ulrich Petersohn, for instance, seemingly allows for some overlap when he states that 'the interests of the principal and the

⁶ See Chapter 1, Section 1.

⁷ Stöber (2007), p. 122, Petersohn (2008), p. 8.

agent never match completely'.⁸ However, his subsequent argument exemplifies the PSC literature's stance on the possibility of overlapping interests in PSI client relations: The PSC is 'a profit-driven entity [whose] decision-making process is always based on a cost-benefit analysis [and who] will always seek to maximize their profit at the client's expense'.⁹ Thus, from the PSC literature's point of view, the interests of PSCs and their clients do not only not overlap, PSCs are also believed to use any opportunity to exploit their customer relations - even at their clients' expense. Given that the PSC literature also discounts motives other than financial profit, which would bar PSCs from engaging in opportunistic behaviour at the expense of their clients, it seems to suggest that PSCs primarily benefit at their clients' expense. While the PSC literature does not make this suggestion explicitly, scholars such as Singer claim that PSCs would 'be tempted by any leeway to increase profits at their client's expense'.¹⁰ It is also indicative that the PSC literature does not consider ways in which PSCs and their clients could benefit from their relationship other than at each other's expense.

Hidden Action and Hidden Information

Furthermore, the relationship between PSCs and their clients is believed to abound with hidden information and hidden action, which allows PSCs to shirk without having to fear significant consequences from their principals.¹¹ Hidden information describes a situation in which agents enjoy an information advantage over their principal that can be used to increase profit.¹² PSCs are, for example, better informed about the security environment they operate in and the qualifications of their employees. By exaggerating the threat exposure of their clients and the quality of their employees respectively, PSCs can convince their clients to consume more of their services or pay more for them.¹³ In turn, hidden action describes a situation in which the principal cannot observe agents' actions, offering agents the opportunity to engage in behaviour that increases their profit at their principal's expense.¹⁴ PSC may also be dishonest to their clients about their use of staff and equipment or they may employ a more or less aggressive stance than agreed upon.¹⁵ The prevalent

⁸ *Ibid.*

⁹ *Ibid.* See also Singer (2003), 154–155.

¹⁰ Singer (2003), p. 155.

¹¹ Hidden information and hidden action are also often referred to as adverse selection and moral hazard in the economics literature (Arrow (1985), p. 38).

¹² Pratt/Zeckhauser (1985), p. 3, Douma/Schreuder (2002), p. 55ff.

¹³ Leander (2005), p. 804ff. Petersohn (2008), p. 8.

¹⁴ Arrow (1985), p. 37, Douma/Schreuder (2002), p. 60ff.

¹⁵ Petersohn (2008), p. 8.

notion that PSCs could prolong conflicts to create demand for their services is likewise predicated on hidden action.¹⁶

Chapter One further outlined the literature's assertion that PSCs are able to shirk their duties, because their clients lack effective means to sanction their behaviour. Unlike the state-organized military, their principals allegedly cannot force PSCs to 'stay in the theatre and perform a duty'.¹⁷ Most authors focus exclusively on the principal's lack of (military or regulatory) authority over PSCs. However, a lack of authority alone does not sufficiently describe the advantage PSCs allegedly enjoy over their principals. After all, as Peter Feaver has shown with respect to civil-military relations, the civilian leadership's authority does not guarantee that soldiers necessarily pursue its goals.¹⁸ Instead, agents – and this applies to PSCs and soldiers alike – can shirk in more subtle ways than by blatantly refusing an order. PSCs, for example, can provide their clients with an exaggerated assessment of their security environment to induce them to purchase more PSC services.

Clients' inability to force PSCs to do their bidding is further exaggerated by the extent to which clients allegedly have become dependent on PSC services. Agency theory implicitly assumes that, principals can switch to another agent should they become aware of their agent's shirking. While switching agents is not a costless endeavour, switching costs are generally not assumed to be prohibitively high. In contrast, the PSC literature regards clients as unable to easily switch to another service provider mid-contract, as even a short disruption to the provision of security services may have devastating consequences.¹⁹ As a result, PSCs allegedly could threaten to withhold their services and thus extract further profit, for example through renegotiations, knowing that their clients' dependence on their services leaves them no option but to acquiesce to their demands.²⁰

The Origins of the PSC Literature's Understanding of the P/A Problem

Why does the PSC literature conceptualize client relations in the PSI in this manner? After all, this conceptualisation is not derived from a significant engagement with the available

¹⁶ Jennings (2006), p. 39, Musah/Fayemi (2000), p. 28, Perlo/Sköns (2008), p. 14.

¹⁷ Petersohn (2008), p. 9.

¹⁸ Feaver (2003), p. 59. See also Baker (2010), p. 93.

¹⁹ Singer in Pelton (2006), p. 108. The previously discussed problem of low-ball offers also constitutes an example for such behaviour (See Chapter 1 Section 3).

²⁰ Singer (2003), p. 155.

empirical evidence. While interviews with PSCs feature in the PSC literature,²¹ client interviews are rare and are largely focused on the public sector's use of PSC services.²² Private sector clients are largely ignored, which is particularly unfortunate, because this thesis' interviews suggest that some of them have made use of the PSI's services for decades.²³

Likewise, the literature's conceptualization of client relations in the PSI is not based on an in-depth engagement with the extensive economic literature on agency theory, although PSCs are primarily portrayed as economic actors. While many authors either explicitly or implicitly use agency theory in their analysis, they either note the applicable economic literature only in passing²⁴ or not at all.²⁵ Even works whose analysis strongly relies on an application of agency theory to the PSI make little use of the extensive economic literature on the subject.²⁶

Instead, the PSC literature's use of the P/A problem seems to be largely informed by non-economic applications of agency theory. Peter Feaver's *Armed Servants*²⁷ and, especially, John Donahue's *The Privatization Decision*,²⁸ contributions to debates in civil-military relations and public policy, respectively, play an important role in the PSC literature.²⁹ While the use of non-economic applications of the P/A problem is not *per se* objectionable, it shapes the PSC literature's views on client relations. The public policy debate, in particular, tends to portray the P/A problem as a "make or buy" decision, i.e. a binary choice between two very different alternatives: A private 'profit-seeker', who 'in exchange for a *price*, agrees to *deliver a product*' or a public 'civil servant', who 'in exchange for a *wage*, agrees to *accept*

²¹ Examples include Berndtsson (2009), Kinsey (2009), Carmola (2006).

²² See, for example, Cotton *et al* (2010).

²³ Stoppelkamp (2009), Worcester (2009), Ashwell (2008), Priestley (2009).

²⁴ Examples include Pratt/Zeckhauser (1985) in Avant (2005), p. 75FN114, Oliver Williamson, Douglas North, Armen Alchian, Harold Demsetz in Dickinson (2011), p. 148,

²⁵ Examples include Baker (2011), p. 85ff., Petersohn (2008), p. 8ff., Singer (2003), p. 151ff.

²⁶ See, for example, Cockayne (2007), Stöber (2007).

²⁷ Feaver (2003). See, for example, Baker (2011), p. 9.

²⁸ See Donahue (1989) in Avant (2005), p. 48, Singer (2003), p. 154, Bruneau (2011), p. 110. Donahue's influence is largely indirect: The Privatization Decision influenced both Singer's and Avant's books, which are, in turn, cited widely throughout the PSC literature.

²⁹ This penchant for non-economic applications of agency theory is partly attributable to the fact that most contributors to the PSC literature have a background in IR/political science rather than economics (see Chapter 2 Section 8).

instructions'.³⁰ In essence, public and private agents are viewed as different instruments, and the public policy debate aims to determine for which tasks and under which circumstances the use of either tool is most appropriate.

This, of course, is a simplistic characterization of what is a multi-faceted debate on privatization in the public policy literature. It is debateable how much said literature itself is to be blamed for the PSC literature's understanding of the P/A problem. On the one hand, Donahue himself puts great emphasis on the abstract nature of his comparison between private and public agents, while the subsequent use of his discussion in the PSC literature shows no such compunction.³¹ On the other hand, he maintains the artificially stark contrast between private and public actors at the expense of the various hybrid forms of public/private actors that are characteristic of privatization. Indeed, Feigenbaum *et al* suggest that a similar model of two 'distinct, bounded, and mutually exclusive' spheres is prevalent in the privatization debate, but note that '[i]n reality, though, the relationship between public and private is much more complex than this'.³² In any case, the PSC literature's focus on the public policy debate and its "make-or-buy" approach shapes the PSC literature's understanding of the P/A problem: Not only does it assume a stark contrast between private and public actors, an antagonistic relationship between principals and agents and (an abundance of) opportunities to shirk, it also makes little effort to discuss goal alignment and monitoring beyond the possibility of regulation based on strict, formal laws, intrusive monitoring and severe sanctions. As Chapter Six shows, this is by no means the only way to address P/A problems.

Conclusion

This section argued that the PSC literature's use of the P/A problem relies on two specific assumptions, namely the antagonistic relationship between PSCs and their clients and an abundance of opportunities for the former to shirk. The section further suggested that the PSC literature's analysis of client relations in the PSI in general and of the P/A problem in particular is informed by non-economic uses of the concept, specifically by the public policy

³⁰ Donahue (1989), p. 39-46. Whether this characterization does justice to the public policy debate as a whole is admittedly debatable. However, it accurately describes the limited part of said debate that informs the PSC literature.

³¹ See Chapter 1 Section 5.

³² Feigenbaum *et al* (1998), p. 9. See also Williamson (1999) and his characterization of public and private agents. See also Walsh (1995), p. xiff.

debate. Due to this focus on PSI client relations as a “make or buy” decision, i.e. the decision to purchase a service in the market or to rely on a public bureaucracy to produce it, the PSC literature puts little emphasis on monitoring and incentive design beyond considering formal regulation, intrusive monitoring and severe sanctions.³³ The next section discusses whether the said assumptions are applicable to the UK PSI.

Part I: The Applicability of the P/A Problem to the PSI

While this thesis considers the P/A problem to be, in principle, a very useful way of analyzing customer relations in the UK PSI, it rejects the literature’s specific application of the problem and its underlying assumptions, namely the antagonistic interests of PSCs and their clients and an abundance of opportunities for shirking. The following sections discuss four reasons why these assumptions are ill-applicable to the UK PSI, namely (1) the prevalence of long-term relationships in the PSI, (2) the role of networks in the UK PSI and (3) the relative power of PSCs and their clients and (4) the role of uncertainty in PSI client relations. The sections further discuss alternative approaches to the P/A problem that draw more heavily on the applicable literature in economics and economic sociology.

Section Two: Long-term Relationships in the PSI

When authors discuss PSCs’ shirking, they usually focus on the consequences of such behaviour for clients and on clients’ inability to prevent PSCs from shirking: Should a PSC walk away from its contract, which clients allegedly can do little about, the government institutions or the civilian contractors the PSC serves would be exposed to physical insecurity, which could, in turn, disrupt the clients’ often mission-essential service provision.³⁴ In contrast, little effort has so far been made to explore the consequences shirking would have for PSCs.

The Prevalence of Long-term Contractual Relationships in the PSI

One, commonly overlooked, factor that suggests that shirking could have considerable consequences for the PSC in question is the prevalence of long-term contractual relationships in the PSI. Interviews suggest that long-term contracting is particularly salient

³³ See Chapter 6 Part II.

³⁴ See, for example, Petersohn (2008), p. 8, Singer (2003), p. 158ff.

in the UK PSI, as private sector clients tend to renew contracts with their current provider rather than turn to the market to find a new one.³⁵ Indeed, several interviewees stated that their companies regularly do not even obtain competing bids for price-comparison purposes.³⁶ One interviewee claimed that, the last time his company tendered their contract, it was ‘largely to keep them [i.e. the current contractual partner] on their toes’.³⁷ Moreover, if clients do decide to change provider, they often turn to a select group of PSCs with whom they already have a pre-existing relationship rather than to the wider market.³⁸ The importance of long-term relationships is exemplified by the fact that, even in recent years when the conflicts in Afghanistan and Iraq expanded the pool of PSC clients, approx. 80% of UK PSCs’ business is conducted with returning clients.³⁹ Indeed, one UK PSC representative suggested that most companies are less concerned about ‘selling products’ than about ‘building relationships’.⁴⁰

Public sector procurement notably does not allow for similarly close client relations: Contracts are publicly tendered; bids are often anonymised. Moreover, the procurement of PSC services is often separate from its end-users. While PSCs protect diplomatic personnel, DoS contracts are often managed and evaluated by DoS personnel or contracting officers,⁴¹ who are not necessarily stationed “in theatre”.⁴² As a result, close relationships may develop between PSCs and the end-users of their services, but these relationships have little bearing on the contracting process.⁴³ Still, the WPPS contract, for example, is awarded for five years, which creates a relatively long contractual relationship as well.⁴⁴ Moreover, interviews with UK PSC representatives suggest that bidding for public sector contracts, due to its complexities and costs, requires the participating PSCs to specialize.⁴⁵ Since such specialization is not economical for a one-off bid, UK PSCs that pursue large government contracts, both by US, UK and other government clients, often aim to become a public sector

³⁵ Marshall (2010), Sorge (2009), Schenz (2009), Anonymous 01 (2008), Anonymous 02 (2008). See Chapter 4 Section 2.

³⁶ Marshall (2010), Forbes (2007).

³⁷ Ashwell (2008).

³⁸ Sorge (2009), Schenz (2009). Anonymous 06 (2011).

³⁹ Lewry (2009), Donald (2006), Claridge (2010).

⁴⁰ Phillips (2010).

⁴¹ Higgins (2011).

⁴² Schooner (2005), p. 557.

⁴³ Reed (2010), Higgins (2011). Since the Nisoor Square incident, every DoS PSD (erklärst Du diese Kürzel irgendwo? Was ist ein PSD oder ein DS?) is accompanied by a DS officer (*Ibid*).

⁴⁴ One year plus four option years (Isenberg (2009), p. 30). Individual task orders, however, have a shorter duration.

⁴⁵ Worcester (2009), Donald (2006), Claridge (2010), Phillips (2010), Willis-Fleming (2008).

supplier in the long-term. Thus, the relationship between UK PSCs and their public sector clients at home and abroad likewise tends to constitute a long-term relationship.

The Consequences of Long-term Contractual Relations on PSCs and their Clients

The prevalence of long-term contracting in the PSI is relevant for its client relations, as it allows clients greater control over PSC behaviour. So far, the PSC literature has conceptualized the relationship between PSCs and their clients as a one-off encounter. Insofar as time is considered to constitute a factor in PSI client relations, it is believed to favour PSCs: Using a low-ball offer,⁴⁶ PSCs are allegedly able to avoid market-based competition for PSC services, only to increase their profits through re-negotiations once their clients become dependent on their service provision. In contrast, long-term contractual relations offer clients the means and opportunity to “punish” PSC misbehaviour.

PSC clients may be unaware of or unable to punish PSC misconduct when it actually occurs, but long-term contractual relations allow them to exert punishment *ex post*. This is particularly important, because, while PSCs enjoy a general information advantage over their clients,⁴⁷ clients can often discover misconduct only after the fact, e.g. through their own investigations, through media reports or through disgruntled former PSC employees. Once misconduct is discovered, long-term contracting offers clients the opportunity to punish PSCs by e.g. withholding payment for their services. Long-term contractual relations allow clients to punish even after the initial contract has ended, as clients can declare PSCs ineligible for any future contracts.

However, the most effective means for clients to influence PSC behaviour is likely to be the relationship itself and the value it holds for PSCs. Indeed, two reasons suggest said value to be high: First, interviews suggest that contract renewal processes are less complicated and their outcome more certain than the arduous and uncertain bidding processes PSCs otherwise have to undergo.⁴⁸ Secondly, client relations have an important signalling function in the market for PSC services. PSCs benefit from their association with legitimate businesses, such as insurance companies, while the premature dissolution of a contract can

⁴⁶ See Chapter 1 Section 3.

⁴⁷ Kathleen Eisenhardt argues that this information advantage decreases over the course of a long-term relationship, as principals become increasingly familiar with their agents and thus better at determining whether or not they are shirking (Eisenhardt (1989), p. 62).

⁴⁸ Edwards (2011), Thompson (2008), Willis-Fleming (2008).

do significant reputational damage. This reputational damage would likely not be limited to PSCs' core business, but may extend to their ability to attract outside financing.

Alternative Approaches to the P/A Problem in Long-Term Contracting

Therefore, the literature's conceptualization of the P/A problem and the prevalence of long-term contracting in the PSI seem to be at odds. *Prima facie*, even economists' use of the P/A problem seemingly differs little from the PSC literature's approach. Economists generally characterize principals and agents as rational actors with conflicting interests in a relationship that is fraught with hidden action and information.⁴⁹ However, there are a number of subtle differences – one of which is relevant to the prevalence of long-term contracting in the PSI.

In his seminal study *The Evolution of Cooperation*, Robert Axelrod notes that in a one-off exchange or in an exchange with a known end, selfish strategies are likely to dominate. This roughly corresponds with the PSC literature's approach to the P/A problem. However, Axelrod further argues that '[t]his reasoning does not apply if the players will interact an infinite number of times'.⁵⁰ Indeed, '[w]hat makes it possible for cooperation to emerge is the fact that the players might meet again'.⁵¹ Whether agents shirk or cooperate therefore does not depend on their profit interest, but on whether they expect future interaction. If this is the case, Axelrod suggests that 'cooperation [...] can develop even between antagonists'.⁵² The long-term contractual relations that characterize the PSI are clearly more akin to this form of interactions without a known end. Indeed, even the caveats Axelrod identifies as potentially limiting cooperation, namely the possibility that relations may end and that future profits are less certain,⁵³ seem less problematic in the context of the PSI. With respect to private sector clients, the close, often personal relationship provides continuity and, thus, the promise of future business even when a contract ends and a new one is not to follow immediately. With respect to public sector clients, the level of specialization and financial commitment necessary for PSCs to successfully compete for large public sector contracts provides a strong disincentive to treating the end of a contract as an endgame-like situation. As a result, long-term contracts become essentially 'self-enforcing',

⁴⁹ Pratt/Zeckhauser (1985), p. 2-4.

⁵⁰ Axelrod (1990), p. 10.

⁵¹ *Ibid*, p. 12.

⁵² *Ibid*, p. 22. See also Pratt/Zeckhauser (1985), p. 6.

⁵³ *Ibid*. P.

because the short-term pay-offs of shirking pale in significance compared to the promise of future business.⁵⁴

Applied to the PSI, Axelrod's claims therefore suggest that, due to the prevalence of long-term contractual relations, PSI client relations are characterized by cooperation, rather than antagonism and an abundance of opportunities for shirking.⁵⁵ Axelrod's characterization of agency relations is particularly useful for understanding PSC behaviour, because it does not violate the rationality assumption that is at the heart of the PSC literature's conceptualization of PSC behaviour and at the heart of traditional economics.⁵⁶ Moreover, Axelrod's line of argument shifts attention away from the contract to its underlying relationship by suggesting that expectations of future business discourage shirking not just as long as PSCs are connected to clients by an actual contract. Thus, he provides a rationale for PSCs making relationship-specific investments, e.g. by foregoing the short-term profits shirking may offer, even in the absence of a contract.

Conclusion

David Campbell rightly notes that the relationship between parties *ex ante* and *ex post* the signing of a contract can be very different.⁵⁷ However, this section has shown that this only partially applies to long-term contracting in the PSI, as this background condition gives clients considerable opportunities and means for punishing PSC misconduct. Moreover, section two also suggested that client relations in the PSI may hold value for PSCs aside from the revenue they extract from their clients: PSCs derive reputational benefits from being associated with their clients. Finally, the section used Axelrod's work to show why cooperation rather than shirking may be the most rational form of behaviour for PSCs. Given this analysis, it is thus surprising that, to date, the PSC literature has not yet recognized the importance of long-term contractual relations.

One possible explanation lies in the literature's doubts about the permanence of PSCs as corporate entities. A widely held belief suggests that PSCs could easily evade most domestic regulation by simply moving to a more lenient jurisdiction.⁵⁸ The ease with which PSCs can

⁵⁴ Deakin/Michie (1997). P. 9.

⁵⁵ On the effect of long-term relationships on agency problems, see also Pratt/Zeckhauser (1985), p. xii.

⁵⁶ See Chapter 1 Section 1+5.

⁵⁷ Campbell (1997), p. 312.

⁵⁸ See Chapter 6 Section 1.

allegedly move to different jurisdictions also implies that client relations are assumed to be easily rebuilt or replaced after relocation. This describes the PSI akin to a commodities market, where anonymous parties interact in one-off trades, like ships in the fog, never to see one another again. Contrasting this image, the next section shows that customer relations in the UK PSI have often grown over decades, based on a web of often personal relationships and, as a result, are steeped in trust, mutual respect and, at times, even affection. Regulatory evasion, as envisioned by the PSC literature, would therefore arguably involve winding up the PSC in question, re-incorporating it in the new jurisdiction – and thus severing many of these key relationships, which are essential for its corporate survival.

Section Three: Networks in the PSI

The PSC literature's view of client relations in the PSI is chiefly focused on the contractual relationship between PSCs and their clients – and primarily on those with the public sector. The previous section suggested that this conceptualisation may be too narrow given that PSCs tend to abstain from shirking even if not or no longer constrained by a contract, as long as future business with the client concerned remains a possibility. The PSC literature thus overestimates the importance of contracts and, as this section shows, underestimates the importance of the web of relationships in which contracts in the PSI are embedded.

The PSC Literature's View on Contracting

According to Thomas Bruneau,

'[t]he nature of the contract [...] is central to the contracting process'.⁵⁹ The '[e]ffectiveness [of a PSC] is only as good as the contract and the organizational processes used to plan, award, and administer the contract. Therefore, it is the overall contract management process, not the contractor per se, that must be reviewed, analysed, and reformed'.⁶⁰

This focus on the actual written contract, which builds on extensive planning that identifies and codifies requirements and measures of contractor performance, describes a popular

⁵⁹ Bruneau (2011), p. 113.

⁶⁰ *Ibid.*, p. 129.

view on contracting not only in the PSC literature,⁶¹ but also among US government agencies.⁶² This approach emphasises the importance of formal, generic, even anonymous contracting processes that position contractual parties at arm's length from one another: As previously noted, public sector clients are often forced to publicly tender rather than renew contracts and PSCs competing for public sector contracts are often asked to take their company's name off their bids.⁶³ From this point of view, security contracting in Iraq and Afghanistan is seen as problematic, because it had been allowed to 'grow willy-nilly',⁶⁴ without proper 'strategic' and 'tactical' planning,⁶⁵ based on "handshake deals" with insufficient documentation⁶⁶ and with little concern for how PSCs would integrate into the broader military effort.⁶⁷

This view is strongly influenced by contracting practices in the procurement of weapons system⁶⁸ and makes little allowance for the volatile security environment PSC services operate in and the necessary flexibility to quickly respond to environmental changes. For instance, in a submission to the Committee on Government Reform, Representative Henry Waxman admonished the increasing use of 'non-competitive' and 'abuse-prone' contracting tools in the Iraqi reconstruction.⁶⁹ This criticism assumes that sufficient time and information were available at the time to properly tender contracts, to define contractual requirements and to measure contractor performance. However, given, how rapidly and unexpectedly the security environment deteriorated in Iraq in 2003-2004 and considering the speed with which the US government intended to implement its reconstruction efforts, this assumption is at best questionable.⁷⁰

While the PSC literature's focus on written contracts and on the application of contracting standards as derived from weapons system procurement is open to criticism,⁷¹ concerns about the level of uncertainty that is inevitably involved in PSC contracting seem merited. Some authors are taking the fact that '[c]ontracts cannot be drawn up to well cover such

⁶¹ Cowen (2007).

⁶² Bruneau (2011), p. 220.

⁶³ Phillips (2010), Isaacs (2010).

⁶⁴ Gates in Newell (2009).

⁶⁵ Rene Rendon in Bruneau (2011), p. 132.

⁶⁶ SIGIR (2009 III), p. 15.

⁶⁷ Simons (2009), p. 73.

⁶⁸ David Walker in GAO (2008 III), p. 4, Rene Redon in Bruneau (2011), p. 132.

⁶⁹ Waxman (2006), p. ii.

⁷⁰ See Chapter 2 Section 4.

⁷¹ Part II will discuss this issue in greater detail.

unforeseen contingencies [as are likely to arise in a conflict environment],⁷² to argue that security contracting ought to be limited as a matter of principle.⁷³ They are particularly concerned about clients' inability to *ex ante* specify their particular security needs due to the volatile security environment. In this view, PSC service contracts are thus necessarily incomplete,⁷⁴ prompting fears that PSCs could exploit the renegotiations necessary to fill the gaps in these incomplete contracts at their clients' expense.⁷⁵ The argument that uncertainty complicates the effective use of private agents is supported by some economists, notably by Williamson's article *Public and Private Bureaucracies*.⁷⁶ Here, Williamson echoes a widely-held view in transaction cost economics, which argues that the transaction costs of contracting through the market are likely to be relatively high if uncertainty and asset specificity are high and if transactions occur infrequently.⁷⁷ Asset specificity, i.e. whether assets can be transferred to an alternative use without loss in productive value, seems to be low in the PSI, as accountability and oversight capabilities as well as equipment, vehicles and installations can easily be transferred to a new supplier. Likewise, while the market for PSC services has been volatile since 2003, demand from public and private sector clients is sufficiently sustainable for contractual relations not to be considered infrequent. However, uncertainty is undoubtedly high. This, at first sight seems to support the literature's concerns about client relations in the PSI.

The Limits of Contracting in Business Relations

Yet, the prevalence of uncertainty and of incomplete contracts need not imply that agency relations in the PSI are necessarily problematic. Instead, economics considers uncertainty and incomplete contracts to be ubiquitous in contemporary commercial relations.⁷⁸ Indeed, several trends emerging in the second half of the twentieth century heightened the level of integration and rationalization of global commerce and consequently increased uncertainty.⁷⁹ For instance, companies increasingly shifted to just-in-time production to

⁷² Fredland (2004), p. 210.

⁷³ Stanger in CWC (2010).

⁷⁴ Fredland (2004), p. 211. See also Hartley (2004), p. 204.

⁷⁵ Carmola (2006), p. 169.

⁷⁶ See Chapter 2 Section 9.

⁷⁷ Williamson (1999), p. 312.

⁷⁸ Hart/Moore in Campbell (1997), p. 313.

⁷⁹ One may instead argue that uncertainty has not increased, but that economic processes, due to their increased rationalisation, have become more sensitive to it.

reduce inventory and carry costs⁸⁰ and outsourced production processes to benefit from outside expertise and reduce capital costs.⁸¹ This simultaneous increase in market-based transactions and uncertainty apparently did not lead to prohibitively high transaction costs.

Legal scholars, notably Stewart Macaulay, recognize that this new challenging environment and the complex planning involved in companies' business exchanges nowadays is not reflected in their contracts.⁸² Instead, empirical data Macaulay gathered for his seminal study *Non-Contractual Relations in Business* suggest that well-functioning exchanges are often based on overlapping, inconsistent and, at times, contradictory legal arrangements.⁸³ Moreover, adjustments to the exchange, e.g. an increase in personnel, were, at best, incompletely incorporated in contracts.⁸⁴ Practitioners were often either unaware of existing legal arrangements or they ignored them, especially obligations like cancellation duties and automatic contractual punishments that could lead to the deterioration of the business relationship.⁸⁵ Macaulay's data further suggest that, insofar as conflicts occurred, partners to the exchange generally resolved these amicably and without reference to the original contract. Even a breach of contract rarely resulted in a lawsuit.⁸⁶ Macaulay claims that, rather than contract law, '[b]usinessmen often prefer to rely on "a man's word" [...], a handshake, or "common honesty and decency"— even when the transaction involves exposure to serious risks.'⁸⁷ Overall, his work portrays agency relations in a very different light than the PSC literature: Rather than characterized by an antagonistic relationship in which agents primarily benefit at their principal's expense, the parties to an exchange are seemingly focused on cooperating with one another. Indeed, one participant in Macaulay's study captured a prevalent opinion: "'You can settle any dispute if you keep the lawyers and accountants out of it'".⁸⁸

⁸⁰ Bernanke/Frank (2002), p. 571

⁸¹ *Ibid.*, p. 266-267.

⁸² Macaulay (1963), p. 9. Other notable authors in this field are David Campbell, Ian MacNeil, Simon Deakin and Jonathan Michie. Macaulay's work, however, has been particularly influential on economics, management studies and economic sociology, especially on Granovetter's work on embeddedness (Granovetter (1985), p. 497).

⁸³ Such contradictory legal arrangements can, for example, result from each party to the contract using its own forms and thus fine-prints during negotiations (*Ibid.*, p. 7-8).

⁸⁴ *Ibid.*, p. 9.

⁸⁵ *Ibid.*, p. 10.

⁸⁶ *Ibid.*, p. 10-11.

⁸⁷ *Ibid.*, p. 6.

⁸⁸ *Ibid.*, p. 11. Macaulay further notes that parties abstain from legal sanctions, because of concerns about a loss of reputation this may bring about (*Ibid.*, p. 14).

Macaulay's observations and the challenge they pose to the PSC literature's approach to agency relations raise two questions in particular: First, what allows contractual parties to abandon contract law and instead deal in "good faith" with one another? One source of "good faith" lies in long-term contractual relationships, as addressed in the previous section. In short, successful interactions over time produce trust and a common understanding that help avert misunderstandings and make it easier to resolve problems encountered.⁸⁹ Moreover, similar to Granovetter, Macaulay argues that contracts do not describe atomised economic actions, but that they are 'floating on a sea of custom',⁹⁰ and therefore are based on networks of personal, social and business relationships.⁹¹ Similarly, David Campbell argues that social factors, at times considered irrational from a narrow economic point of view, lead agents to comply with contracts.⁹²

What leads contractual parties to adhere to these customs, even if contradictory to short-term profits, is the role of reputation within these networks. The importance of reputational factors also highlights that economic and non-economic factors often cannot be clearly distinguished: A buyer is more likely to enter into a contractual relationship with a company that has a good standing rather than one that is shunned by clients and competitors. Moreover, Macaulay notes that, within an industry, '[e]ach has something to give to the other',⁹³ and being excluded from, for example, information that is freely shared among the members of a network can constitute a competitive disadvantage.

Relational Contracting in the UK PSI

The second question Macaulay's work raises is to what extent such "relational contracting" is applicable to the UK PSI. Given the differences in how public and private agents procure PSC services,⁹⁴ the influence of networks is likely to be higher with respect to private sector clients. However, while public sector clients as a whole tend to favour formal contracting based on an arm's length relationship,⁹⁵ interviews suggest that DFID and especially the

⁸⁹ Macaulay (1963), p. 12, Broadbent *et al* (2003), p. 176, Pratt/Zeckhauser (1985), p. 5.

⁹⁰ Macaulay (2000), p. 775. Macaulay argues that lawyers, economists and sociologists, due to the 'incomplete view' of their chosen discipline, fail to fully capture contractual relations (Macaulay (1963), p. 3).

⁹¹ *Ibid.*, p. 13.

⁹² Campbell (1997), p. 308.

⁹³ Macaulay (1963), p. 13.

⁹⁴ See Chapter 4 Section 2.

⁹⁵ This view is primarily informed by the contracting practices of US government institutions, particularly the DoD, DoS and USAID.

FCO maintain very close, informal relations to UK PSCs.⁹⁶ UK PSCs also employ many former politicians, civil servants and generals in key advisory positions, which further fosters close relations to UK government institutions.⁹⁷ Moreover, several interviews suggest that the UK PSI greatly benefits from the far less tangible, yet important social ties that connect the upper echelons of politics, the civil service and the military in the UK.⁹⁸ While the influence of such ties, formed during university, military service and even at public schools, is hard to quantify and is easily overstated or mischaracterized,⁹⁹ they are nonetheless important in the UK, not least because of geographical proximity: Policy-makers, civil servants, private sector clients and PSC representatives in the UK are largely concentrated in London.

This web of social and personal relationships is particularly prominent among UK PSCs, their private sector clients and the insurance companies that frequently connect the two. Interviews suggest that corporate security managers tend to be recruited from the same labour pool as PSC representatives, i.e. there is often a relationship connecting them before they engage in client relations with one another.¹⁰⁰ Moreover, clients and insurance companies frequently poach PSC employees.¹⁰¹ Interestingly, PSCs tend to encourage rather than oppose this practice in the belief that their respective client relationship is thus strengthened.¹⁰²

Indeed, networks exert considerable influence in part because they are central to the business strategy of UK PSCs. In interviews, UK PSC representatives stressed that they primarily view their business not through their products, but through the relationships to their clients.¹⁰³ Finally, the extent to which client relations in the UK PSI rely on good faith is evident in the contracting practice, particularly with respect to private sector clients. PSCs often provide services in response to situational needs based on little more than a verbal agreement with the client's local representative, trusting that the client will later ensure

⁹⁶ Beese (2011), Reed (2010), Willcocks (2008), Clissitt (2010).

⁹⁷ Examples include the former UK High Commissioner to South Africa Paul Boateng (Aegis), Sir Michael Rose (CRG) and Sir Malcolm Rifkind (Armorgroup).

⁹⁸ Willis-Fleming (2009),

⁹⁹ There is a particular fascination in the PSC literature with the role of London's Clubs as a venue for PSI networking, especially the Special Forces Club (Chatterjee (2004), Geraghty (2007), p. 25).

¹⁰⁰ Toyne-Sewell (2011), Ashwell (2009), Forbes (2007). Similar patterns can be found in Germany (Stoppelkamp (2009), Schenz (2009), although German multinational companies notably also draw on UK military personnel (Cook (2006)).

¹⁰¹ Priestley (2009), Forbes (2007), Ashwell (2008), Hession (2007).

¹⁰² Worcester (2009), Beese (2011), Clissitt (2010).

¹⁰³ Claridge (2010), Clissitt (2010), Thompson (2011).

reimbursement.¹⁰⁴ Sometimes, PSCs provide such services even without a pre-existing contractual relationship to the client in question: *EI*, for instance, provides a stand-by service for security and assisted living in Afghanistan to attract new clients.¹⁰⁵ Interviews with PSC clients further suggest that they occasionally receive consulting services from PSCs, for example during the proposal stage of a project, which are often not reimbursed.¹⁰⁶ These interviews also emphasise that the need for good faith extends to both parties in PSI client relations: One client expressed a seemingly widespread understanding among private sector clients thus:

‘[T]here is a fine line between ringing up people, if you end up not using them. You do not want to become a nuisance. That’s why, when I have money to spend, I make sure it goes to people that have been helpful to me in the past’.¹⁰⁷

Conclusion

According to Kathleen Eisenhardt, agency theory describes the relationship between principal and agent ‘using the metaphor of a contract’.¹⁰⁸ Thus, while contracts are undoubtedly an important part of agency relations, the discussion above showed that, in the UK PSI they are not reducible to them. Indeed, the underlying relationship is often far more relevant for the quotidian interactions between PSCs and their clients than the actual written contract. Thus, the notion that contracts in the PSI ‘create specifically negotiated, and usually short-term and informal, relationships’¹⁰⁹ is simply misleading. Returning to Macaulay’s metaphor, a more accurate description would be that contracts float on top of a web of long-term social, personal and business relationships that connect PSCs and their clients. Although informal, the influence of these networks is by no means inconsequential. This role of networks in the PSI and the extent to which they connect PSCs and their clients has not been given sufficient consideration by the current PSC literature.

¹⁰⁴ Thompson (2011), Edwards (2011).

¹⁰⁵ Phillips (2010).

¹⁰⁶ Marshall (2011), Forbes (2007). Interviews with PSC representatives confirm this practice (Drake (2011), Thompson (2008), Kroha (2009)).

¹⁰⁷ Marshall (2011). See also Donn (2011).

¹⁰⁸ Eisenhardt (1989), p. 58.

¹⁰⁹ Carmola (2006), p. 168.

Section Four: Power in PSI Client Relationships

The previous section noted that the distribution of power influences the PSC-client relationship. This is particularly prescient as the relative power of PSCs and clients often differs considerably *ex ante* and *ex post* of the signing of the contract, as incomplete contracts offer agents opportunities to shirk.¹¹⁰ In essence, Peter Singer's aforementioned concern about clients' dependency on PSCs follows a similar logic as PSCs are empowered to force their clients into more beneficial arrangements regardless of prior contractual agreements.¹¹¹ This section argues that the PSC literature misrepresents the distribution of power in PSI client relations. In contrast to the PSC literature's depiction, this constellation arguably clearly favours clients over UK PSCs, in particular, once the role of uncertainty is taken into account. In its conclusion, the section discusses how asymmetric power relations can affect the presence of good faith in PSI client relations.

Power in the PSI

Power describes the ability of one party to impose its will on another through, for example, the use of force, legal sanctions and market mechanisms. With respect to the use of force, concerns about UK PSCs coercing their clients seem exaggerated. Unlike mercenaries and PMCs, the military power of UK PSCs is limited and pales in comparison to public sector forces, especially in Afghanistan and Iraq.¹¹² While private sector clients do not have comparable military assets under their immediate control, they can expect public sector forces to come to their assistance in the very unlikely case that a UK PSC would threaten them with violence.

Legal means for exerting power likewise favour clients. Given that the court of jurisdiction for PSC contracts is generally the US or the UK, clients can sue their contractual partners should they breach their contract and, taking into account legal fees and punitive damages, the client-initiated financial punishment on PSCs could thus be substantial. Interviews with UK PSCs representatives suggest that legal sanctions are particularly powerful, because,

¹¹⁰ Broadbent *et al* (2003), p. 177, Campbell (1997), p. 312, Deakin/Michie (1997), p. 7, Maher (1997), p. 148.

¹¹¹ Singer in Pelton (2006), p. 108.

¹¹² See Chapter 2 Section 2.

unlike most UK PSCs, clients tend to have pockets deep enough to pursue a potentially protracted legal battle.¹¹³

Finally, not only is the bargaining power of buyers in the PSI relatively high,¹¹⁴ their lack of deep pockets also makes PSCs vulnerable to market power, as high labour costs and the lack of access to credit cause even brief suspensions of payment by their clients to have considerable deterrent power.¹¹⁵ Moreover, clients often choose to contract with smaller PSCs, as their demand constitutes a larger share of said PSCs' total revenues, which makes it easier for them to impose their will on the PSC in question.¹¹⁶

Power can also take on an indirect quality, e.g. a party can set norms and standards to conform with its interests. Public sector clients thus derive significant power from their double function as clients and regulators, as UK PSCs are well aware in their interactions with the FCO that it is not "just another customer".¹¹⁷ Moreover, clients derive indirect power from the contested legitimacy of the UK PSI: UK PSCs are eager to involve civil society actors in the development of industry-wide standards.¹¹⁸ One representative of a civil society organization suggested that '[i]t's amazing what you can shame PSCs into doing'.¹¹⁹

Agency relations, however, are not just affected by the relative power of the parties, but also by their respective ability to accept and accommodate risk.¹²⁰ A risk-averse agent would abstain from shirking even if it is unlikely that it would be detected and punished by the principal. Several reasons suggest that UK PSCs are fairly risk-adverse: For instance, they lack easy access to cheap credit or substantial financial reserves that would allow them to survive the occasional set-back that a more risk-prone approach would be likely to provoke. Also, UK PSCs rely heavily on their reputation to attract customers, as the quality and price of PSC services are not easily comparable.¹²¹ Since "repairing" one's reputation is not easily achieved, PSCs generally also describe themselves as risk-averse.¹²² This characterization is

¹¹³ Phillips (2010), Claridge (2010), Worcester (2009).

¹¹⁴ See Chapter 4 Section 6.

¹¹⁵ A case in point for this is Armorgroup, which nearly went bankrupt in 2006 because it failed to renew a contract in time (Beese (2011), Toyne-Sewell (2011)).

¹¹⁶ See also the discussion on "extreme boutique companies" in Chapter 4 Section 6.

¹¹⁷ Beese (2011), Worcester (2009), Lewry (2009).

¹¹⁸ Bearpark (2006).

¹¹⁹ Simon De Beer, conversation with the author, 7 February 2007, London, UK.

¹²⁰ Eisenhardt (1989), p. 58, Arrow (1985), p. 43-45.

¹²¹ See Chapter 4 Section 6.

¹²² Kroha (2009), Phillips (2010), Claridge (2010)

supported by the fact that the distribution of risk, in the form of liability, is frequently a major sticking point in negotiations between PSCs and their clients.¹²³ A limited appetite for risk, however, diminishes whatever power PSCs possess in principle, as it makes them less likely to accept the potential costs associated with shirking.

Concerns about UK PSCs' power advantages therefore seem exaggerated. This assessment is further supported by a closer analysis of the literature's suggestions for why PSCs allegedly possess such power over their clients. Essentially, the literature argues that clients give in to PSCs' demands because the costs of punishing them are deemed too high. However, while the revenue generated through contractual fines and legal proceedings generally does not cover legal and switching costs,¹²⁴ punishments - Macaulay makes this point with respect to legal sanctions - may also be employed to satisfy an irrational desire to "get even".¹²⁵ Moreover, punishments are by no means limited to legal sanctions. Pratt and Zeckhauser note that '[i]n virtually every industry there is a gossip circle that tells who is honorable, tough, sleazy, and so on',¹²⁶ and interviews suggest that UK PSC clients are sufficiently connected to allow clients to inflict reputational damage on offending PSCs.¹²⁷ Moreover, while the financial pain that can be inflicted through legal sanctions is limited, exerting reputational punishments through networks is not similarly restricted by proportionality. Moreover, clients do not require incontrovertible evidence to terminate their business relations with a PSC or to inflict reputational damage on it – a suspicion of shirking is enough.¹²⁸ Finally, the use of punishments has an important signalling function for clients, indicating to current and future contractual partners that the company in question will not tolerate shirking. Thus, while the direct net-effect of punishments may be negative, its indirect benefits may sway clients to make greater use of punishments.

Conclusion

The relative power distribution among UK PSCs and their clients that underlies their relationship therefore seems to favour clients. Indeed, interviews with UK PSC

¹²³ Phillips (2010).

¹²⁴ Campbell (1997), p. 313, Deakin/Michie (1997), p. 8.

¹²⁵ Macaulay (1963), p. 17. See also Carpenter *et al* (2004), p. 415ff, Fehr/Gächter (2002), p. 137ff, Gintis *et al* (2003), p. 153ff.

¹²⁶ Pratt/Zeckhauser (1985), p. 13.

¹²⁷ Ashwell (2008), Priestley (2009), Stoppelkamp (2009).

¹²⁸ Interviews with PSC representatives suggest that they would likely comply with rather than contest a client's wish to terminate their contractual relationship early to "save face" (Phillips (2010), Claridge (2010), Thompson (2007)).

representatives and employees tend to underscore this assessment, especially the way in which they characterize their clients' influence on their behaviour. For instance, PSCs often highlight that their client generally have 'deeper pockets',¹²⁹ they stress the extent to which clients 'keep them on their toes'¹³⁰ and demand for them to be 'whiter than white' in how they operate.¹³¹ The power of PSCs *vis-à-vis* their clients is further undermined by uncertainty in the PSI, which the following section will discuss in greater detail.

Section Five: Uncertainty and Mutual Dependency in the PSI

Uncertainty describes a situation in which the outcome of an action is not known in advance, forcing actors to take decisions with limited information.¹³² The literature's engagement with the role of uncertainty is very uneven. While some authors discuss uncertainty's effect on clients and their inability to specify their contractual needs during negotiations,¹³³ such notions of an "'unlevel playing field'"¹³⁴ fail to note how PSCs are equally affected by uncertainty. Nor does the literature offer an account of how both parties eventually incorporate uncertainty into their strategic interactions.

One source of uncertainty for UK PSCs is that they cannot be assured that their shirking will not eventually be discovered and punished by their clients.¹³⁵ Another source of uncertainty is the security environment PSCs operate in. Not only is their ability to predict and prevent insurgent attacks very limited or even inexistent, PSCs also have significant risk exposure in terms of their personnel, equipment and, crucially, their reputation. As Thomas Hammes notes: 'If Blackwater loses a principal like Bremer, they are out of business.'¹³⁶ Finally, PSCs face considerable uncertainty in their market environment, i.e. volatility in the demand for their services and in their labour costs. Moreover, the paradigmatic change the PSI has

¹²⁹ Phillips (2010).

¹³⁰ Donald (2005).

¹³¹ Drake (2011).

¹³² More specifically, economists describe uncertainty as a 'state in which the number of possible outcomes exceeds the number of actual outcomes and when no probabilities can be attached to each possible outcome' (Bannock (2003), p. 390). For an economic sociology perspective on uncertainty, see Beckert (1996), p. 803ff.

¹³³ Petersohn (2008), p. 8, Fredland (2003), p. 212ff. Unfortunately, others merely criticise the lack of 'precise design' of contracts and thus fail to note that uncertainty makes such specification impossible (Bailes/Holmes (2007), p. 17. See also Waxman ((2006), p. 7ff).

¹³⁴ Holmqvist (2005), p. 30.

¹³⁵ See Section 2.

¹³⁶ Hammes in Armstrong (2008), p. 89.

undergone since 2003 makes it difficult for PSCs to use past experience to inform their strategic management.¹³⁷

Interviews further indicate that, unlike operational uncertainty, UK PSCs are poorly equipped for dealing with market-based uncertainty.¹³⁸ As Phillips notes, ‘the UK PSI has some of the most dedicated people providing security in a challenging environment. That does not mean that they are good business men’.¹³⁹ This inability to deal with market-based uncertainty is in part owed to the prevalent organizational structures in the PSI, in which senior management is often occupied with operational matters rather than dedicated to focusing on strategic management.¹⁴⁰ Interviews also suggest that there is also a general lack of business acumen among UK PSCs,¹⁴¹ for which the cultural dominance of the “Operations” department is partly to blame, as its members often occupy key management positions.¹⁴² As a result, Phillips claims that UK PSCs tend to ‘gravitate towards providing an excellent service in terms of the technical expertise that goes into the product, but they have little idea about pricing it correctly’.¹⁴³ Other interviewees point to UK PSCs’ inability to understand their clients’ business model¹⁴⁴ and the often haphazard way in which UK PSCs have diversified their business as evidence for their poor strategic management.¹⁴⁵

Exposure to uncertainty thus increases the risk that UK PSCs misjudge their risk exposure, which, in turn, makes them more vulnerable to market volatility and more susceptible to cliental punishment and influence. Also with a view to overcoming this uncertainty, PSCs often seek to establish close, often personal relationships to their clients, as their customers’ signals help PSCs to chart a sustainable course for their business.¹⁴⁶ Indeed, several UK PSC representatives stated that they would informally consult their clients before making investment decisions.¹⁴⁷ This need for proximity is incompatible with PSCs’ alleged inclination to shirk at any given opportunity. Moreover, the extent to which PSCs rely on

¹³⁷ See Chapter 2 Part 2.

¹³⁸ Toyne Sewell (2011), Priestley (2009), Worcester (2009), Clissitt (2010), Forbes (2007).

¹³⁹ Phillips (2010). Similar statements featured prominently in many interviews (Ashwell (2008), Clissitt (2011), Priestley (2009), Hession (2007), Donald (2006), Drake (2011), Worcester (2009)).

¹⁴⁰ See the discussion of LCONs in Chapter 3 Section 4.

¹⁴¹ Phillips (2010), Claridge (2010).

¹⁴² See Chapter 3 Section 8.

¹⁴³ Phillips (2010).

¹⁴⁴ Sorge (2009), Schenz (2009), Hession (2007).

¹⁴⁵ Priestley (2009), Worcester (2009).

¹⁴⁶ This signaling function provides a further argument against the PSC literature’s assumption that PSCs and their clients only benefit from their relationship at each other’s expense.

¹⁴⁷ Thompson (2007), Worcester (2005).

such relationships suggests that the dependency Singer and others are concerned about does not seem to be one-sided, but mutual¹⁴⁸ - a notion that the PSC literature has yet to consider in its use of the P/A problem.

Strategic Interaction under Conditions of Uncertainty

Dearkin and Michie argue that such close relationships between contractual partners – like Macaulay they use the term “relational contracting” – produce trust,¹⁴⁹ which helps the PSI and its clients to overcome an important problem at the intersection of power and uncertainty. Clients can incorporate the risk of ‘strategic behaviour’, i.e. the possibility that agents take advantage of incomplete contracts,¹⁵⁰ into their decision-making. They can, for instance, attempt to deter shirking by advertising their intention to punish it disproportionately. Under conditions of uncertainty, however, how can clients distinguish shirking from other causes of problems?

As noted earlier, the very insecurity that motivates clients to use PSCs also makes monitoring PSC activities and thus identifying instances of shirking largely impossible. Outcome-based assessments of PSC performance are likewise problematic, because a shirking PSC may benefit from inept insurgent attacks, while a diligent PSC may fail due to overwhelming opposition.¹⁵¹ Moreover, a principal has to distinguish between shirking and situations in which problematic behaviour occurs not because, but despite the best efforts of the agent. Effective punishment is thus quite difficult in the PSI. This constitutes a problem for PSCs and their clients alike: “false punishment” costs PSCs a loss in revenue and reputation, while clients bear the costs of switching providers. Moreover, the problem has broader implications: If a high propensity for shirking is considered not to be limited to individual PSCs, clients may seek out alternatives to PSC service provision and leave the PSI altogether. Alternatively, should clients increase the rate of punishment, which would inevitably increase the rate of “false punishments”, they risk creating a “market for lemons”. In short, they risk that all but those PSCs, which shirk so much that their misconduct pays for the increased costs of punishment, exit the market.¹⁵²

¹⁴⁸ Economists prefer the term ‘bilateral dependency’ (Williamson (1999), p. 312).

¹⁴⁹ Dearkin/Michie (1997), p. 11. See also Broadbent (2003), p. 174ff., Campbell (1997), p. 308. Indeed, their understanding of trust is very similar to Macaulay’s notion of good faith.

¹⁵⁰ Campbell (1997), p. 312. See also Broadbent *et al* (2003), p. 177.

¹⁵¹ See Chapter 1 Section 3.

¹⁵² For a detailed discussion of the “market for lemons“, see Akerlof (1970), p. 488.

The PSC literature views the principal's inability to assess an agent's performance as problematic. However, contrary to the literature's perspective, this uncertainty is arguably an even greater problem for PSCs as agents: While their clients can make do without PSCs by using a substitute, PSCs' corporate survival depends on such contractual relationships. Thus, rather than conceptualizing contractual relationships from the principal's perspective, scholars focusing on relational contracting view agency relations as a coordination problem affecting both parties,¹⁵³ and thus underscore the role of mutual dependency as highlighted in the previous section. Indeed, applying relational contracting to the PSI arguably turns the P/A problem on its head: Given that 'the definition of any situation [in an agency relationship] is open to interpretation'¹⁵⁴ and that the distribution of power within PSI client relations favours clients, PSCs need to find a way to overcome their customer's potential concerns about their performance.

According to Deakin and Michie, contractual parties build close relationships to one another to overcome such coordination problems even when uncertainty is high and monitoring impossible on the basis of the trust such relationships produce.¹⁵⁵ They identify two types of trust, which are both prevalent in the UK PSI: '[S]elf-interested trust' is based on an agent's hope for future business and is arguably prevalent in the long-term relationship between PSCs and their public sector clients, while 'socially-oriented trust' is based on shared norms and culture among contracting parties, which nicely captures the close, often personal long-term relationships between UK PSCs and their private sector clients.¹⁵⁶ While this understanding of "relational contracting" therefore neatly bridges section two's focus on self-interest with section three's focus on the societal context, it adds an important third dimension to the debate: Deakin and Michie understand trust less as something that simply emerges from contractual relations than as something that is actively generated both at the inter-personal and at the institutional level.¹⁵⁷ Others further highlight that generating trust in contractual relations is not limited to its immediate parties, but that the legal and social environment and the market structure in which contractual relations take place play a

¹⁵³ Bachmann (1998), p. 311.

¹⁵⁴ Fligstein (2004), p. 411.

¹⁵⁵ Deakin/Michie (1997), p. 11.

¹⁵⁶ Deakin/Michie (1997), p. 20. See also Bachmann (1998), p. 301.

¹⁵⁷ Deakin/Michie (1997), p. 21, See also Powell (1996), p. 62-63.

crucial role.¹⁵⁸ After all, a minimum level of trust is a prerequisite for parties to “take the plunge” and enter into contractual relations in the first place.

Conclusion

Sections six will further explore the concept of “relational contracting” by reviewing how public and private sector clients organize their relations to UK PSCs. Overall, this section’s discussion raised considerable doubts about the PSC literature’s use of the P/A problem as a means for understanding client relations in the PSI. Indeed, as shown, clients have considerable power and instruments at their disposal to punish shirking PSCs. More importantly, the prevalence of uncertainty and the resulting mutual need for close relationships and trust is incompatible with the notion of antagonism between PSCs and their clients.

Conclusion Part I: Alternative Approaches to the P/A Problem

Sections two through five pointed to various inconsistencies between the PSC literature’s emphasis on antagonism and an abundance of opportunities for shirking in PSI client relationships on the one hand, and the importance of long-term contracting, networks, power relations and uncertainty in the PSI on the other hand. Moreover, each section suggested alternative approaches to agency relations in the PSI, relying particularly on the economic/economic sociology literature: Axelrod’s work on cooperation in long-term relationships suggested that it is in PSCs’ self-interest to abstain from shirking. In turn, Macaulay’s work on the role of non-contractual relations in business highlighted the extent to which shirking would have repercussions in the networks in which PSCs are embedded and the work by Dearkin, Michie and others on relational contracting suggested that shirking could undermine the mutual trust that is vital for PSCs and their clients alike in the face of uncertainty.

Part I, supported by this thesis’ analysis up to this point, thus suggests that the PSC literature’s conceptualisation of the P/A problem is problematic when applied to the UK PSI: The suggestion that PSCs will use any opportunity to shirk presupposes that PSC behaviour is animated by a single, coherent profit-motive – a notion that Chapter Three rejected.

¹⁵⁸ Bachmann (1998), p. 307ff., Maher (1997), p. 150.

Moreover, given the variety of sources and the overall intensity of competitive pressure in the market for PSC services, as described by Chapter Four, PSI client relations can no longer be conceived to offer substantial opportunities for shirking, as implied by the PSC literature.

The Use of the P/A Model in Economics

This conclusion complements the previous sections' analysis by elaborating on how economists' and economic sociologists' perspective on the P/A problem differs from that of the PSC literature. First, agency relations are not problematic as a matter of principle. Indeed, Arrow argues that economists merely tend to focus on those situations that are particularly problematic, i.e. 'when the information available to the two participants is unequal'.¹⁵⁹

Secondly, economists believe that asymmetric information and thus P/A problems are ubiquitous in economic life.¹⁶⁰ Indeed, the concept has even been applied to the economic aspects of relationships that are usually not conceptualized as economic relations, e.g. the "marriage market".¹⁶¹ This has two important implications for how economics approaches the P/A problem. With respect to the public policy debate outlined above, they tend to reject 'the idea of the public agency as a benign, technical entity' and, instead, argue that civil servants are agents as well, whose interests need not align any closer with those of their principal than the interests of private "profit seekers".¹⁶² Moreover, given how ubiquitous agency relations are in economic life, economists expend considerable effort on how to mitigate P/A problems, e.g. through monitoring and the design of reward structures.¹⁶³ Admittedly, mitigation is not entirely absent from the PSC literature, but it is largely reduced to discussions about regulation and the reduction of public sector reliance on PSCs, while market-based solutions tend to receive less consideration.

Thirdly, economists are criticized for characterizing agency as a problem, rather than 'a solution, a neat kind of social plumbing'.¹⁶⁴ The aforementioned statement by Arrow, however, suggests that this critique is somewhat misguided, as problematic agency relations

¹⁵⁹ Arrow (1985), p. 37.

¹⁶⁰ Akerlof (1970), p. 488ff, Douma/Schreuder (2002), p. 109. Interestingly, sociologists share this assessment. Terence Johnson, for example, argues that '[t]here is an irreducible but variable minimum of uncertainty in any customer-producer relationship (Johnson (1972), p. 41).

¹⁶¹ Joshi *et al* (2012), p. 2ff. See also the concept of "Economic Naturalism" in Bernanke/Frank (2007), p. 16.

¹⁶² Williamson (1999), p. 307. See also Buchanan (2003), p. 8ff, Niskanen (1971), p. 38.

¹⁶³ Douma/Schreuder (2002), p. 119ff.

¹⁶⁴ White (1985), p. 188.

dominate the economic literature because it is what economists choose to focus on, because they believe agency relations to be *per se* problematic. Instead, economists generally value agency relations, because they make specialization possible, which, in turn, allows for comparative advantages to be utilized.¹⁶⁵ Indeed, the aforementioned criticism arguably applies much better to the PSC literature's conceptualization of PSI client relations. The benefits of security privatization receive at best scant attention or are outright rejected: Jennings voices a popular critique by stating that '[t]he efficiency argument is perhaps the easiest for [...] sceptics to rebut', because '[t]he distortions of the private military market neutralise or disprove many of the assumptions underlying the economic efficiency argument [for the use of PSCs]'.¹⁶⁶ It is, however, questionable whether the PSC literature's limited engagement with the economics of the PSI can sufficiently support such a claim.

Sections six discusses how public and private sector clients organize their respective relationships to the PSI. They will show that the public sector's engagement with PSCs has largely been consistent with the PSC literature's sceptical view on the PSI and its focus on formal, arm's length contracting. Private sector contracting, however, has largely followed a different path that is more in line with the idea of "relational contracting".

¹⁶⁵ Frank/Bernanke (2007), p. 35ff.

¹⁶⁶ Jennings (2006), p. 38. See also Chapter 6 Section 3.

Part II: Assessing Private and Public Sector Contract Management

Section Six: Public and Private Sector Approaches to Contracting

The comments by Stanger and Isenberg at the outset of this chapter indicate a growing concern not solely about the regulation of PSCs, which will be discussed in detail in the next chapter, but also about the management of their contractual relations. Notably, the PSC literature's analysis, however, focuses primarily on public sector contracting, while the private sector's approach to managing its client relations has to date received little attention. This section, in turn, addresses two aspects of the public sector's contract management, (a) its arm's length approach to contracting and (b) its effect on the evaluation of contractor performance and on the resolution of conflicts in the context of the contractual relationship. Against this background, this section argues that private sector contracting procedures are better suited to fostering trust between contracting parties than those used by the public sector.

Arm's Length Contracting

Chapter Four argued that public sector clients tend to favour contractual relationships at arm's length.¹⁶⁷ This applies in particular to US government contracting, which the following discussion will focus on, as it constitutes, directly or indirectly, a significant share of UK PSCs' public sector revenue in Iraq and Afghanistan since 2003.¹⁶⁸ More importantly, interviews with UK PSCs strongly suggest that US government contracting practices shape the way in which PSCs perceive public sector contracting: Asked to describe how public and private sector clients differed from one another, most interviewees referred to US government practices to describe the former.¹⁶⁹ Finally, the well-documented experience of the US government with PSCs in Iraq and Afghanistan also provides an important reference point for any future UK government engagement with the industry.¹⁷⁰

Manifestations of this arm's length relationship include the use of anonymised bidding processes and of public tendering rather than contract renewal. Another pertinent example

¹⁶⁷ Chapter 4 Section 2.

¹⁶⁸ See Chapter 2 Section 7. For the purpose of this section, US government contracting includes the CPA.

¹⁶⁹ Only two interviewees explicitly noted a UK government institution, i.e. the FCO, in their description (Beese (2011), Gray (2005)).

¹⁷⁰ Reed (2010).

is the system of contracting officers (COs) and contracting officer representatives (CORs) that governs US government contracting in Iraq and Afghanistan. COs, who award, renegotiate and, ultimately, oversee DoD contracts, are overwhelmingly civilians stationed out-of-theatre,¹⁷¹ while CORs, their in-theatre representatives, often lack the necessary expertise and authority. Their position is plagued by high turnover and low prestige.¹⁷² This system has rightly attracted considerable criticism,¹⁷³ albeit arguably for the wrong reasons: While the focus has so far been on the undoubtedly important oversight and accountability deficits it generates, practitioners stress how this structure complicates contractual relations in-theatre.¹⁷⁴ Indeed, the separation – psychological rather than geographical – this system introduces between contractual parties seems to be welcomed by some critics, as it allegedly provides greater oversight and accountability.¹⁷⁵

Private sector clients, on the other hand, prefer a different, much closer relationship to PSCs. While title and exact area of authority vary from company to company, corporate security managers (CSMs) are generally the main point of contact between PSCs and their private sector clients. Since they are primarily responsible for awarding and renewing contracts and for monitoring contractor performance, their role is roughly comparable to that COs in the public sector. Interviews suggest, however, that the role is interpreted very differently in the private sector. For instance, networks often play an important role in initiating relationships between CSMs and PSCs, as initial contact is often established based on personal recommendations.¹⁷⁶ In the UK, such professional networks often rest on a shared cultural foundation,¹⁷⁷ i.e. CSMs often also have a military background and thus “know” one another as well as the PSC representatives they are being introduced to.¹⁷⁸ Thus, early on, there is a personal aspect to the relationship that is not present in public sector contracting. Subsequently, both parties often make relationship-specific investment to strengthen such

¹⁷¹ Douglas (2004), p. 139, CBO (2008), p. 20.

¹⁷² Bruneau (2011), p. 138-139, SIGIR (2009 IV), p. 10ff, Motsek in CWC (2010 II), p. 18.

¹⁷³ Isenberg (2012), CWC (2010 II).

¹⁷⁴ Account of the lack of professionalism, unresponsiveness and inflexibility abounded in the interviews conducted for this thesis. Alas, interviewees were unwilling to have such grievances attributed to them personally.

¹⁷⁵ Anna Leander, conversation with the author, ISA Convention 2009, New York.

¹⁷⁶ Sorge (2009), Schenz (2009). Insurance companies also sometimes fulfil this function (Ashwell (2008), Priestley (2009)).

¹⁷⁷ Priestley (2009), Cook (2006). In contrast, the German ASW understands itself mainly as a professional association (Stoppelkamp (2009), Sorge (2009)).

¹⁷⁸ Interviewees used the term „knowing“ loosely to include institutional familiarity as well, e.g. serving in the same regiment (Willis-Fleming (2009), Clissitt (2010), Cook (2006)).

relationships: Several CSMs stated that they would regularly call counterparts at PSCs, even when they did not have an on-going contract with them, ‘just to keep tabs on them’,¹⁷⁹ while PSCs often provide consulting services to CSMs in the proposal stages of projects free of charge.¹⁸⁰ Given that PSCs are included early in projects, some CSMs even seem to consider PSC representatives “allies”, whose expertise helps them secure funds and influence within their respective organizations.¹⁸¹

While such close relations between CSMs and PSC representatives pose challenges of their own,¹⁸² they are more likely to generate trust between the contractual partners than are those arm’s length relationships preferred by public sector clients. This is particularly salient when it comes to evaluating contractor performance and resolving problems affecting PSI client relations.

Evaluating Contractor Performance and Resolving Problems

Another important difference in how public and private sector clients approach their contractual relations lies in the ways by which their performance is assessed and how problems are resolved, especially when it comes to the autonomy COs and CSMs are afforded by their respective contracting practices.

In the public sector, COs wield considerable power *vis-à-vis* their contractual partners, but they enjoy relatively little freedom in its application. As noted earlier, government contracting is subject to extensive regulation and, although the procedures themselves are often adapted from other purposes and ill-suited for PSC service contracting,¹⁸³ COs are expected to stringently apply these regulations.¹⁸⁴ Moreover, in cases of irregularities or conflict between the contractual partners, COs are often required, by law or contracting procedure, to initiate investigations, which are often conducted by third parties with little prior knowledge of the contractual relationship. Finally, public sector contracting seems to be primarily focused on procedural deficits. Interviews with PSCs suggested, for example, that public sector clients would frequently request further information on an issue not

¹⁷⁹ Marshall (2010), Sorge (2009), Forbes (2007), Cook (2006).

¹⁸⁰ See Section 3.

¹⁸¹ Worcester (2009), Kroha (2009), Priestley (2009). Schenz (2009), Donn (2012).

¹⁸² One possible example is a version of private sector regulatory capture, i.e. a situation in which the close relationship between CSMs and PSC representatives leads the former to no longer be able to objectively assess contractor performance.

¹⁸³ David Walker in GAO (2008 III), p. 4, Rene Redon in Bruneau (2011), p. 132. For the FCO, see Reed (2010).

¹⁸⁴ See Chapter 2 Section 6. See also Motsek in CWC (2010 II), p. 6ff.

because it allowed them to better understand a given situation, but in order to ‘tick a box’, i.e. to fulfil a reporting requirement.¹⁸⁵ This notion that public sector contracting puts greater emphasis on procedural fealty than on its outcome and impact seems to be supported by a 2009 SIGIR audit report. Said report lauded US government contracts for having been awarded competitively,¹⁸⁶ while the high level of concentration in US government contracting for PSC services – just four PSCs received nearly half of all US government spending under review – was not noted as a cause for concern.¹⁸⁷

In the private sector, on the other hand, CSMs enjoy far greater freedom and autonomy in their dealings with PSCs. Interviews suggest that such freedom is in part owed to the fact that there are fewer rules and guidelines encumbering their actions. Insofar as private sector clients have regulations in place governing their use of PSCs, said rules are often written and reviewed by the CSMs.¹⁸⁸ Moreover, CSMs have considerable leeway when it comes to evaluating contractor performance and resolving problems, which is particularly relevant in the context of this section: While the lack of contract management resources in the public sector is widely criticized,¹⁸⁹ it is important to note that private sector clients have far fewer contract management resources at their disposal. Indeed, the majority of CSMs interviewed for this thesis stated that their companies did not have a systematic process in place to evaluate PSC service quality or to monitor prices and quality in the market for PSC services.¹⁹⁰ However, while their contracts tend to be more incomplete as a result, conflicts between PSCs and their private sector clients seem to be rare and generally easily resolved.

Interviews with PSC representatives, employees and CSMs suggest a variety of explanations for this phenomenon, which, in turn, provide interesting insights into how PSI client relations are affected by public and private sector approaches to contracting, respectively. PSC representatives suggested that their greater competence makes it easier to deal with private

¹⁸⁵ Isaacs (2010), Edwards (2011).

¹⁸⁶ SIGIR (2009 III), p. 8+10. Public tendering needs not to be more cost-efficient than contract renewal, even if the renewed contract offers less favourable terms, as its higher costs may be off-set by the expenses incurred by retendering the contract.

¹⁸⁷ *Ibid*, p. 24.

¹⁸⁸ Schenz (2009), Sorge (2009), Marshall (2010). This applies especially to smaller companies with relatively little experience operating in high risk environments. However, while especially large oil and gas companies have more extensive regulation in place, said regulations still pale in comparisons with those used in, for example, US government contracting (Anonymous 02 (2008)).

¹⁸⁹ See, for example, Isenberg (2012).

¹⁹⁰ Sorge (2009), Schenz (2009), Donn (2012), Marshall (2010), Forbes (2007), Stoppelkamp (2009), Ashwell (2008), Priestly (2009).

sector clients.¹⁹¹ Here, competence does not denote a technical qualification, as private sector clients are often at least as unqualified as their public sector counterparts: Especially smaller companies and NGOs often lack a designated CSM and, instead, rely on their HR department.¹⁹² Instead, due to the ‘ungodly churn’, i.e. the high turn-over among CORs,¹⁹³ the main point of contact for PSCs is largely ignorant about the contractual arrangement, which is made worse by the complexity of the contracts in question.¹⁹⁴ However, there is significantly greater continuity in private sector contract management: While CORs switch every four to six month, CSMs stay in their position for years. Moreover, contractual arrangements in the private sector are less complex and their lines of authority clearer, which makes it easier for PSCs to interact with them.¹⁹⁵ Moreover, CSMs are not primarily focused on keeping contractual partners accountable, but on identifying and addressing their company’s security needs. As a result, CSMs are often able to resolve conflicts without involving third parties that are unfamiliar with the contractual relationship,¹⁹⁶ and their contract evaluation and conflict resolution is very much outcome-oriented and intend on continuing the contractual relationship, as the costs of retendering the contract has to be covered by the CSMs’ limited budget. Here, it is also crucial that CSMs are free to choose whether to renew contracts or to turn to the market to find a new provider, as it provides further incentives for PSCs to cooperate.

Conclusion

Private sector clients can therefore, to an extent, make up for their lack of contract management resources by using a closer relationship to their contractual partners. This is not to suggest that close relationships to PSCs are a panacea for organizing PSI client relations. Indeed, it is important to note the limitations of this approach, its potential lack of accountability and its vulnerability to regulatory capture, which received little attention in the above section. Another important limitation is the scalability of close personal relationships. A principal may be able to maintain the close relationships necessary to

¹⁹¹ Worcester (2009), Claridge (2010), Beese (2006), Donald (2005).

¹⁹² Stoppelkamp (2009), Phillips (2010).

¹⁹³ Motsek in CWC (2010 II), p. 18.

¹⁹⁴ Phillips (2010).

¹⁹⁵ A good illustration for why PSCs value clear lines of authority is ArmorGroup, which came under financial pressure in early 2006 in part, because the decision to renew one of its contracts was inexplicably delayed (Beese (2011), Toyne-Sewell (2011)).

¹⁹⁶ The autonomy of the CSM is further highlighted by the fact that his/her contracting procedures are often not fully included in corporate review processes (Sorge (2009), Schenz (2009)).

manage a small contract, but *Erinys'* OPF contract, for example, which employed up to 16,000 people at a time, is a different issue altogether. However, clients usually opt for close relationships to their PSCs, because they cannot afford more elaborate contracting procedures. Both approaches thus have their respective merits. A more fruitful question would therefore be how to combine them in a useful manner.

If private sector contracting practices suffer from a lack of accountability and a vulnerability to regulatory capture, this – of course – invites questions about the drawbacks of public sector contracting practices as well. While their resource-intensiveness has already been noted, another limitation became apparent from PSCs' attitudes to public sector contracting: Not only did most interviewees refer to its practices with derision: "unprofessional", "legalistic" and "not suitable" were frequently mentioned attributes. It was also apparent that public sector practices produced compliance rather than cooperation from its contractual partners. For example, one PSC employee would argue that he was so busy filling out contractually mandated reports that important information that were not covered by the reports would fall by the wayside.¹⁹⁷

Indeed, this observation highlights a broader troubling trend in public sector contract management. Public sector contracting procedures in Iraq and Afghanistan have improved immeasurably since 2003. First, independent oversight was established through SIGIR, CBO, GAO and CRS reporting¹⁹⁸ and the Committee on Oversight and Government Reform (OGR) and the Commission on Wartime Contracting (CWC).¹⁹⁹ Government contracting for PSC services was consolidated in the DoD and DoS,²⁰⁰ reporting standards were tightened²⁰¹ and the control of PSCs in Iraq put under the purview of the DoD.²⁰² Moreover, the DoD and DoS charged military commanders with investigating PSCs,²⁰³ forced PSCs to install cameras and recording devices in their vehicles and embedded Bureau of Diplomatic Security (BDS) personnel in PSDs.²⁰⁴ However, over the course of these improvements, PSCs were asked to comply with more and more reporting and vetting requirements with little regard for the

¹⁹⁷ Edwards (2011). Similar incidents were described by Lynch (2010), Loe (2010).

¹⁹⁸ Bruneau (2011), p. 127.

¹⁹⁹ Schwartz (2008), p. 4-5.

²⁰⁰ Since 2006, USAID receives security services through the WPPS (SIGIR (2008), p. 1).

²⁰¹ CBO (2008), p. 10.

²⁰² DoD/DoS (2007), Cotton *et al* (2010), p. 34. The DoS lacked 'an acquisition corps' and 'a tradition of providing oversight and control over [PSCs]' comparable to the DoD's. (Bruneau (2011), p. 123).

²⁰³ DoD (2007).

²⁰⁴ Higgins (2011), Broder/Johnston (2007).

overall regulatory burden.²⁰⁵ It is not only questionable whether these measures justify their costs, as the adding of compliance requirements has been an important contributor to the increasing costs of competing for government contracts.²⁰⁶ The observation discussed above also questions whether more accountability and transparency requirements necessarily succeed in generating greater accountability and transparency – and less misbehaviour on the part of PSCs.

Conclusion

This chapter highlighted deficiencies in the PSC literature's approach to PSI client relations, specifically in its specific application of the P/A problem. It showed how long-term contractual relations change the incentives UK PSCs face, how client relations are embedded in social relations, how power is distributed in their disfavour in the relationship to their clients and how uncertainty causes the dependency of PSCs and their clients to be mutual. This chapter's rejection of the PSC literature's specific use of the P/A problem does not mean, that the concept cannot be usefully applied to the UK PSI. However, the relational contracting environment UK PSCs find themselves in, especially *vis-à-vis* the private sector, causes their interests to overlap with those of their clients and, therefore, their relationship to be less antagonistic. Moreover, that environment is also less rich in opportunities to shirk, as it makes it more likely that such shirking will be detected and punished by their clients. Thus, by introducing power, the influence of networks and uncertainty into consideration, this chapter provides an alternative, arguably more sophisticated view on agency relations in the UK PSI.

Cost-Plus/IDIQ Contracts

This alternative view on the P/A problem is best illustrated by showing how it is better able to explain phenomena in the UK PSI. For instance, cost-plus and Indefinite-Delivery/Indefinite-Quantity (IDIQ) contracts have attracted considerable criticism for allegedly making it difficult for customer to control costs.²⁰⁷ According to the PSCs

²⁰⁵ Worcester (2009), Isaacs (2010).

²⁰⁶ Phillips (2010).

²⁰⁷ Holmqvist (2006), p. 30-31, Petersohn (2008), p. 2, Waxman (2006), p. 10-14. In an IDIQ contract, a PSC negotiates a price for a specific good or service, allowing government agents to request this service from the PSC in question for the specified price without negotiating another contract. Often IDIQ contracts are awarded to

literature's use of the P/A model, PSCs should favour this form of contracting, as it provides them with abundant opportunities to shirk. Yet, interviews with UK PSC representatives suggest that cost-plus/IDIQ contracts are, at best, considered a mixed blessing.²⁰⁸ This lack of enthusiasm becomes understandable upon considering the relationship such contracts present and the extent to which they expose PSCs to uncertainty. According to Christian Miller, 'the rationale [for cost-plus/IDIQ contracts] is that such constructs remove financial risks that might otherwise discourage qualified companies from bidding'.²⁰⁹ These contracts, indeed, significantly reduce some uncertainty: A PSCs can sign a long-term cost-plus contract even if labour costs in the PSI are very volatile. However, cost-plus/IDIQ contracts offer no certainty with respect to how much business and thus revenue the PSC in question would receive even in the short-/medium-term. Indeed, while, in December 2007, DoD had contracts with 32 companies, employing 10,000 contractors, just three month later, this had shrunk to 18 companies with 7,000 employees.²¹⁰ Applying Dearkin's/Michie's two sources of trust to the relationship cost-plus/IDIQ contracts create, this suggests that the PSC in question has little reason to develop "self-interested trust", given how strongly public sector demand fluctuates. However, said PSC also has few reasons to develop "socially-oriented trust", given the arm's length approach to contracting that is prevalent in the public sector. Thus, a situation arises, in which high uncertainty meets low trust, which explains the limited enthusiasm for cost-plus/IDIQ contracts. Worse still, PSCs bound by such contracts have to maintain some capacity to be able to compete for and fill the task orders cost-plus/IDIQ contracts may or may not produce and, as a result, have to bear considerable up-front costs. This could easily lead PSCs to overextend themselves financially, especially given their limited resources, which, in turn, explains why such contracts are prone to abuse.

What is the Value of Contracting in the PSI?

The emphasis this chapter put on the relational nature of contracting in the PSI and the role of trust/good faith in its client relations raises the question why PSCs and their clients are still keen on the use of formal contracting. Indeed, interviews with PSC representatives suggest that contractual negotiations, even for contract renewal with a private sector client,

multiple companies, which then compete against one another to fill task orders (an example for this is the WPPS contract). A cost-plus contract works similarly to the IDIQ contract, but instead of a specific price, it specifies a certain percentage the PSC in question can charge in addition to its costs.

²⁰⁸ Beese (2011), Toyne-Sewell (2011).

²⁰⁹ Miller (2007), p. 78.

²¹⁰ Elsea *et al* (2008), p. 9-10.

require considerable effort from both parties and are often contentious.²¹¹ However, in the light of this chapter's discussion, three reasons provide a continued rationale for formal contracting.

First, as Luhmann argues, 'contracts provide a possibility, not a necessity for sanctions.'²¹² Thus, formal contracts provide a form of insurance for PSCs and their clients alike, which, in the context of their relationship, may even foster trust. The possibility of punishment such contracts provide not only lessens the rationale for shirking, the fact that a PSC agrees to enter into such a formal contract signals its intention to deal in good-faith. Secondly, formal contracts provide its parties with a means of communication.²¹³ For instance, clients can use them to express their expectations and intention to punish shirking *vis-à-vis* their PSCs to avoid misunderstandings. Moreover, it also allows the individuals that negotiated the contract to communicate their mutual understanding of their relationship to the members of their respective organizations. Finally, contract negotiations also provide a legitimate opportunity for its parties to address genuine conflicts of interest, such as how much PSC services should cost. Contract negotiations are thus a kind of safety valve, which prevents that contentious issues need to be addressed again and again in the everyday interaction between PSCs and their clients. As one PSC employee described it: '[F]ortunately, they [contract negotiations] take only place once a year'.²¹⁴

Crucially, this approach to formal contracting, which sees it essentially as supporting, not replacing a trust-based relationship, casts a new light on an issue that the PSC literature otherwise struggles to account for: According to Kateri Carmola, 'even though contracts are made within an almost hyperlegal setting, legal remedies are rarely used; instead, the relationship is merely broken off'.²¹⁵ If formal contracting primarily serves to support a trust-based relationship, pursuing legal remedies after the breakdown of said relationship would be akin to locking the stable door after the horse has bolted.

²¹¹ Nibblett (2008), Lewry (2009), Artero (2008).

²¹² Luhmann in Bachmann (1998), p. 315.

²¹³ Bachmann (1998), p.

²¹⁴ Nibblett (2008).

²¹⁵ Carmola (2006), p. 167.

Implications

Finally, the last section suggested that the way in which clients organize their contractual relationship influences the behaviour of PSCs. Specifically, it suggested that, if they are in an arm's length relationship, PSCs tend to comply with its formal contractual requirements, rather than cooperate with the contractual partner in question. PSCs can thus be said to "respond" to their clients attempts to control their behaviour and, crucially, not necessarily in the intended fashion. This raises interesting, so far unanswered questions for the important debate on how best to regulate PSCs. The next chapter and this thesis' conclusion will engage with said debate by showing how the PSC literature's view on regulation is shaped by the prevalent flawed model o PSC behaviour, before proposing an alternative approach to PSC regulation based on the alternative conceptualization of PSC behaviour that was developed throughout this thesis.

Chapter 6: Behavioural Modelling and Its Implications for PSC Regulation

Applying the Proposed Behavioural Model

According to Julien LeGrand, any sort of market intervention, including policy-making on PSC, relies on a behavioural model.¹ However, for policy-makers, understanding PSC behaviour is not an aim in and of itself. Instead, their interest in behavioural modelling is defined by the demands of the policy-making process. By implication, the need to take legislative action constrains policy-makers' ability to devote time and resources to reach a better understanding of its potential consequences, especially when the need for government intervention is perceived to be urgent.

This is arguably particularly salient with respect to the debate on PSC regulation in the UK.² The UK is one of the largest markets for PSC services and UK companies have played crucial, yet controversial roles in Afghanistan and Iraq.³ Indeed, support for PSC regulation is widespread among NGOs and civil society groups,⁴ defence experts⁵ and politicians.⁶ Contrary to Sheehy *et al*'s claim that PSCs 'argue that the lack of regulation governing their conduct is not a concern',⁷ UK PSCs strongly support regulation,⁸ so much so that Sarah Percy suggests 'PSCs are more enthusiastic about developing regulation [...] than state governments'.⁹

The Proposed Behavioural model and the Policy-Making Process

One of the drawbacks of the proposed behavioural model, which will be discussed further in this thesis' conclusion, is that it is more limited and less definitive in its results and that greater caution is required in its application, when compared to the behavioural model that

¹ LeGrand (1997), p. 150.

² Cockayne *et al* (2008), p. 2, Isenberg (2004), p. 45.

³ Cockayne *et al* (2009), p. 17.

⁴ War on Want (2006), Lilly (2002)

⁵ Hastings (2006), Walzer (2008).

⁶ Reid (2009), Willcocks (2008).

⁷ Sheehy *et al* (2009), p. 9.

⁸ Claridge (2006), Spicer (2006), Beese (2004), BAPSC (no date).

⁹ Percy (2006), p. 9

is prevalent in the PSC literature's. Its use of Granovetter's theory of embeddedness causes the proposed behavioural model to include PSCs' economic actions and their social context, i.e. it opts for greater complexity over parsimony to generate more accurate explanations and predictions of PSC behaviour. In the policy-making realm, this trade-off may, however, may have problematic implications. Given the aforementioned strong pressures for legislative action, policy-makers may opt for the prevalent behavioural model with its less accurate, yet more decisive predictions. This chapter will caution against such a course of action, arguing that the prevalent model's flawed assumptions about PSC behaviour would produce regulation that is ineffective and inefficient.

Outline

Part one of this chapter explores the evolution of the debate about PSC regulation and the reasons it identifies for adopting regulation. **Section one** explores the impact of perceptions of traditional private military actors have on the regulatory debate. It shows how the literature overemphasises continuity between PSCs and traditional military actors based on alleged similarities in their behaviour. This notion of continuity establishes existing laws aimed at prohibiting mercenary activity as reference points for the debate on PSC regulation and, thus, extends existing biases to PSCs. **Section two** discusses the need for regulation, which the PSC literature emphasises over its potential limitations and costs. Indeed, the benefits of PSC use are generally treated perfunctorily, as are practical and moral considerations that may limit PSC regulation. Likewise, regulatory alternatives and the industry's concerns are largely dismissed as ineffective and biased respectively. **Sections three to six** discuss three reasons for regulation that the PSC literature has coalesced around: control, accountability, transparency and the growth of the PSI. Part one concludes by arguing that the PSC literature portrays regulation as a zero-sum game with high stakes: Unless PSCs are tightly controlled through strict formal regulation, intrusive monitoring and severe sanctions, their self-interested profit-motive supposedly leads them to exploit any opportunity to engage in problematic behaviour - with possibly dramatic consequences. The conclusion also suggests that this zero-sum approach rests on specific assumptions about PSC behaviour, i.e. the prevalent behavioural model, and that a different conceptualization of PSC behaviour would suggest a far less drastic regulatory intervention.

Part two discusses the PSC literature's assessment of the regulatory *status quo* and the lessons to be drawn from it. **Sections seven to nine** each evaluate the PSC literature's view on existing international, domestic and informal regulation respectively and their prospects of addressing the identified need for regulation. The literature is not only largely dismissive of the effectiveness of the regulatory *status quo*, it also identifies structural problems with all existing types of regulation, which cause them to fall short of the identified regulatory need. Throughout part two, this thesis explores the question to what extent the prevalent behavioural model influences the literature's assessment of the regulatory *status quo* in general and, in particular, of the effectiveness of informal regulatory means. **Section ten** concludes this chapter by discussing the literature's preferred regulatory solution, the regulatory matrix. It argues that, in its advocacy, the literature neglects compliance costs and their impact on the market for PSC services. While the conclusion affirms a need for regulation, it also contends that the literature's proposals, based on the prevalent behavioural model, risks creating regulation that is both ineffective and inefficient. An alternative regulatory proposal based on the proposed behavioural model will be outlined in the final chapter of this thesis.

Part I: The Development of the Regulatory Debate and the Need for Regulation

Section One: The History of the Debate on PSC Regulation

When the debate on PM/SCs emerged in the latter half of the 1990s, the then-prevalent views on private military actors were decidedly negative. While states had historically relied extensively on mercenaries, mercantile companies and privateers,¹⁰ their use had largely ceased in the 19th century, as social, political and technological changes increasingly undermined the need and justification for using private military actors.¹¹ Even when they were widely used, private military actors enjoyed a poor reputation for their brutality and lack of loyalty.¹² As states became less reliant on private military actors, independent private military actors, namely corsairs and pirates, came to define the image of private military actors.¹³ By the middle of the 20th century, the process of nationalizing the means of violence, which had started with the Westphalian Peace of 1648, reached its apex with the enshrinement of the monopoly of legitimate violence as a *sine qua non* of state sovereignty in the UN charter.¹⁴ Private military actors truly seemed to be a thing of the past.

Yet, in the 1960s and 1970s, mercenaries briefly reappeared in the context of post-colonial struggles, particularly in Africa.¹⁵ While mercenaries have since disappeared as a decisive factor in contemporary conflict,¹⁶ they continue to influence how contemporary private military actors are perceived: The international community identified mercenaries as a threat to peoples' right to self-determination and codified its opposition to their use in

¹⁰ Thompson (1994), p.54 ff, 60 ff, p. 70 ff.

¹¹ *Ibid.*, p. 68 ff., Tabarrok (2007), p. 566, Howard (2001), p. 58, Mockler (1969), p. 14.

¹² The historical accuracy of Niccolò Machiavelli's frequently cited (Avant (2005), p. 249, Schreier/Caparini (2005), p. 17, Morton (2010), p. 7) comments on mercenaries are disputed (Mallett (1999), pp. 210). Biased historical accounts by Christian monks are held responsible for mercenaries' poor reputation, as they frequently participated in conflicts against the pope (Reiss (1966), p. 20, Schlight (1968), p. 16). Mercenaries also exaggerated their brutality as a sign of military effectiveness (Reiss (1966), p. 29). Finally, class-based prejudice may be responsible for the stigmatization of mercenaries, as their commanders were often commoners (Schlight (1968), p. 15).

¹³ Thompson (1994), p. 44-46. See also Löwenstein (2003), p. 30ff.

¹⁴ Thompson (1994), p. 3.

¹⁵ See Mockler (1969 and 1985) for a detailed account of mercenary activities in the 1960s/70s.

¹⁶ The examples of Bob Denard's coups in the Comores ((Young (2006), Simons (2007)) and the "Wonga Coup" in Equatorial Guinea (Roberts (2006)), however, emphasise that mercenary activity did not cease altogether. See also Singer (2003), p. 37 and Schreier/Caparini (2005), pp. 16-17).

international and national legislation.¹⁷ These historical attitudes towards private military actors constitute an important influence on the contemporary regulatory debate. They establish a persistent antagonism, a ‘seemingly instinctive reluctance’ towards PSCs.¹⁸ However, the persistence of comparisons between PSCs and traditional private military actors, especially mercenaries, is surprising, given how widely acknowledged the differences between the two types of actors are.¹⁹ Since the onset of the regulatory debate, authors have rejected suggestions that PSC activities constitute a ‘form of mercenary activity’²⁰ as ‘post-colonial myopia’.²¹

Notions of Historical Continuity and Their Implications for PSC Regulation

The reason why PSCs are so frequently associated with mercenaries seemingly lies in how the literature conceptualizes their behaviour. PSCs are distinguished from traditional private military actors primarily based on their permanent corporate structure.²² Yet, when describing PSCs, many authors seem to question precisely this permanent corporate structure. For example, PSCs are alleged to be able to easily re-locate to a more lenient jurisdiction in the face of strict domestic regulation²³ and their reliance on subcontracting is seen as evidence of a ‘very weak corporate structure’.²⁴ Concerns about PSCs’ corporate structures are even more pronounced when their behavioural implications are discussed. Their permanent corporate structures arguably leads PSCs to pursue corporate rather than ‘individual profit or adventure’,²⁵ suggesting PSCs would forego lucrative opportunities if they impede long-term profitability.²⁶ Yet, one looks in vain for descriptions of such restraint in the PSC literature’s discussions of PSC behaviour. Instead, fraud, price gauging and IHL violations are believed to occur frequently²⁷ – behaviour, which is incompatible with a PSC’s long-term well-being. Likewise, it is hard to reconcile accusations that PSCs perpetuate conflicts to create business opportunities with their interest in long-term profitability, as

¹⁷ These efforts were largely led by newly independent African nations (Doswald-Beck (2007), p. 117, Stinnett (2005), p. 213).

¹⁸ Holmqvist (2006), p. 8.

¹⁹ See Avant (2005), p. 30, Singer (2003), p. 40ff.

²⁰ Musah/Fayemi (2000), p. 1.

²¹ Millard (2003), p. 1. See also Zarate (1998), Howe (1998) and Shearer (1998).

²² Singer (2003), p. 46, Percy (2006), p. 14, Cusumano (2009), p. 4, Krahmann (2010), p. 1. See also Chapter 1 Section XXX

²³ Spear (2006), p. 42, Avant (2007), p. 185, Holmqvist (2005), p. 54, Singer (2004 IV), p. 535.

²⁴ Petersohn (2008), p. 64. See also Walker/Whyte (2005), p. 687.

²⁵ Singer (2003), p. 46. See also Shearer (1998), pp. 46-47, Avant (2009), pp. 29-30.

²⁶ Avant (2007), p. 192.

²⁷ Isenberg (2009), p. 41, Sheehy et al (2009), p. 5, War on Want (2006), p. 13ff.

such behaviour would alienate existing clients.²⁸ Overall, there seems to be little trust in PSCs to act decidedly different from mercenary units when presented with an opportunity for short-term profit, as there are ‘clear lines of continuity between [mercenaries, PMCs and PSCs]’, one of which is the ‘exchange [of] force for financial reward’.²⁹

This notion of continuity between PSCs and mercenaries has a number of problematic implications for the debate on regulation. First, it establishes the aforementioned prohibitions of mercenary activity as a precedent for PSC regulation.³⁰ This is, however, hardly a suitable template for a contemporary regulatory debate that favours controlling, rather than abolishing PSCs.³¹ The notion of continuity also causes historical attitudes towards private military actors to “spill over” to PSCs.³² It is questionable if PSCs, who work primarily in support of governments, would have been as readily identified as threats to state sovereignty and the monopoly of violence, had they not been associated with mercenaries.

Secondly, by blurring the differences between PSCs and mercenaries, the view on the contemporary PSI is obscured.³³ Discontinuities that distinguish PSCs from mercenaries and PMCs include the types of customers they serve, i.e. democratic states and blue-chip companies rather than rebel movements, and their product portfolio, i.e. defensive security services rather than combat operations. Likewise, comparisons between PSCs and mercenaries obscure similarities between PSCs and “normal” corporations. Unlike mercenary units, whose organisational structure is similar to small military units, PSCs maintain organizational profiles similar to multinational companies, including legal, PR and HR departments.³⁴ Indeed, the contention that ‘[t]here are very few industries that operate in a fashion analogous to PSCs’ may be increasingly inaccurate.³⁵ As markets in developing countries grow in importance, multinational companies increasingly operate under conditions similar to the PSI, i.e. they conduct their business primarily abroad and, due to the ineffectiveness of local legal systems, they are only effectively regulated by their home

²⁸ Jennings (2006), p. 39, FCO (2002), p. 16.

²⁹ Percy (2006), p. 14.

³⁰ Chesterman/Lehnhardt (2007), p. 1.

³¹ Holmqvist (2005), p. 42, Gaston (2008), p. 241, Singer (2004 IV), p. 544.

³² Percy (2007), p. 368.

³³ Cockayne (2007), p. 196-197.

³⁴ Deniger (2008).

³⁵ Percy (2006), p. 38.

states. These similarities between PSCs and “normal” corporations are significant, because measures to hold the latter accountable can be extended to control PSCs and to force greater transparency on them. For instance, PSCs are subject to voluntary and mandatory auditing requirements and they have fiduciary duties towards their shareholders.³⁶ So far, despite frequent complaints about the lack of transparency and accountability in the PSI, the PSC literature has made surprisingly little use of the available corporate data on UK PSCs.³⁷ This thesis, in turn, sought to exploit this source of information on PSCs.

Conclusion

The debate about PSCs and their regulation thus did not start from a “clean slate”. Instead, their association with traditional private military actors, which is largely founded on the prevalent behaviour model, “taints” the PSC literature’s perceptions of the need to regulate.

Section Two: The Need for Regulation

Discussing the need for regulation fulfils three important functions for the broader debate on PSC regulation. First, regulation constitutes nearly always - and certainly in the case of PSC regulation - a significant state intervention into economic processes, which potentially hampers economic efficiency and restricts property rights and the freedom of contract. For such interventions to be justified, a need for regulation has to be clearly established. Secondly, discussions about the need for regulation provide a selective and restrictive function. Not every problem merits regulatory intervention or can be solved by it. By weighing its limits and costs, reasons for regulation are distinguished from problems that cannot or need not be regulated. Thirdly, discussions about the need for regulation identify benchmarks against which regulatory proposals can be evaluated.

Justifying vs. Restricting the Need for Regulation

So far the literature on PSC regulation has arguably gravitated towards making the ‘*The Case for Regulation*’ rather than critically reflecting on its limits and costs.³⁸ While earlier works

³⁶ Beese (2006).

³⁷ Ashkenazi (2006).

³⁸ Caroline Holmqvist mentions the costs of regulating PSCs twice in her 59 page work on the subject (Holmqvist (2005), p. 50 and 54). See also Kinsey (2005), p. 279-280.

did not explicitly address the subject,³⁹ some recent publications have addressed the costs and difficulties involved in regulating PSCs.⁴⁰ This focus is partly attributable to the PSC literature's broad approach to PM/SCs. Support for regulation is easily established by highlighting circumstances in which one of the many different companies the literature defines as PM/SCs could act in a problematic fashion. Assessing the effectiveness and costs of regulation across all these different types of companies, however, is considerably more challenging. Given that the regulatory debate is an important source of information for the policy-making process, the resulting imbalance is far from inconsequential: presented with a strong need for regulation and little information about its costs and limitations, policy-makers are likely to opt for regulation that would otherwise be deemed excessive.

Identifying Regulatory Aims

The aforementioned imbalance also affects the discussion's ability to clearly define regulatory aims and thereby guide the development of PSC regulation. According to Simon Chesterman and Chia Lehnhardt, contributions to the regulatory debate have largely been 'descriptive accounts' of PSC misconduct or 'normative arguments' against their use,⁴¹ which establish the literature's dissatisfaction with the *status quo*, but fail to define an acceptable regulatory end-state and how it could be reached. Indeed, beyond a vague consensus affirming the need for regulation and the impossibility/undesirability of banning PSCs, the literature offers few specific regulatory aims.

These deficits are partly attributable to the ongoing evolution of the debate: Vague regulatory aims necessarily precede more concrete ones and greater effort is spent on assessing the costs and limits of regulation as the matter to be regulated is gradually better understood. Yet, given its inaccurate conceptualization of PSCs' behaviour and the socio-economic context in which it takes place, the literature's reliance on the prevalent behavioural model may prove to be a stumbling-block, rather than a stepping-stone in that process.

³⁹ See, for example, Singer (2003).

⁴⁰ Percy (2006), p. 63-64, Cockayne *et al* (2008).

⁴¹ Interestingly, they attribute this partly to the conflation of PSCs with mercenaries (Chesterman/Lehnhardt (2007), p. 1-2).

Conclusion

It is thus unlikely that the compliance costs of regulatory proposals, let alone their market-wide impact, will be accurately assessed. The following sections will review the specific reasons for why regulation is urgently needed so as to show how the literature's thinking on regulation is influenced by the prevalent behavioural model. Specifically, they focus on the PSC literature's four main reasons for regulation, namely **control**, **accountability**, **transparency** and **future growth** of the PSI.

Section Three: Reasons for Regulation I: Control

According to Deborah Avant, the effect of PSCs on the control of force is not one, but three-dimensional.⁴² It encompasses **functional control**, i.e. how PSCs affect military effectiveness, **political control**, i.e. who decides on the use of force, and **social control**, i.e. whether the use of force by PSCs is compatible with domestic and international norms and values.⁴³

Outsourcing military functions is believed to diminish the **functional control** of force by limiting the military's ability to operate autonomously.⁴⁴ In addition to the military's growing reliance on private contractors, authors are concerned that PSCs, unlike regular soldiers, cannot be required to provide their services in a time of crisis.⁴⁵ Moreover, critics fear that the decision to outsource may be motivated by reasons other than operational effectiveness, which could suffer as a result.⁴⁶ Finally, the compatibility of PSCs with COIN operations is disputed, as PSCs supposedly undermine the unity of command and strategic coherence in the battle-space.⁴⁷ The literature paints a similarly bleak picture of PSCs' effect on the **political control** of force. In a debate that largely focuses on the US political system, critics suggest that the use of PSCs undermines the checks and balances that hold the different branches of government accountable, e.g. by circumventing the need for legislative consent to troop deployments.⁴⁸ Moreover, the use of PSCs is believed to obscure the costs

⁴² Avant (2005), p. 3-6.

⁴³ Deborah Avant's three dimensions of control are widely used in the literature (Petersohn (2008), p. 3ff, Percy (2006), p. 15-16).

⁴⁴ Petersohn (2008), p. 3.

⁴⁵ Spearin (2003), p. 40, Holmqvist (2005), p. 29, Singer (2004 III), p. 7, Avant (2006), p. 336.

⁴⁶ GAO (2003), p. 11, Singer (2003), p. 97ff.

⁴⁷ Schreier/Caparini (2005), p. 46-47, Cowen (2007), Avant (2006), p. 337.

⁴⁸ Singer (2004 III), p. 10ff, Leander (2007), p. 54, Michaels (2004), p. 1039, Stanger (2009), p.91.

of war, because contractor casualties are not accurately reported.⁴⁹ Hence, the use of PSCs is believed to 'enhance the likelihood of a resort to force'.⁵⁰ PSCs are also criticised for giving actors, which are not democratically legitimized, control over the use of force. PSCs themselves influence decisions about the use of force through their work as government consultants,⁵¹ and multinational companies gain an unprecedented impact on conflicts through their use of PSCs,⁵² which allegedly brings 'violence, money, and suffering in [...] more direct contact than ever in history'.⁵³ Therefore, the use of PSCs is believed to weaken political control and compromise 'the confidence of the citizenry in the democratic practices and institutions of the nation'.⁵⁴ Finally, PSCs' effect on the **social control** of force is believed to be similarly problematic. Broader access to security services is believed to empower actors that are less committed to the norms, values and stability of the international system,⁵⁵ and the use of PSCs gives governments 'plausible deniability', i.e. they can allegedly more easily disown illegal and illegitimate activities.⁵⁶

Criticising the Trinity of Control

Many of the PSC literature's concerns about the control of force are not specific to the use of PSCs but symptoms of broader changes in the political and security environment. Examples include the prevalence of non-state actors and strategic incoherence in the battle-space⁵⁷ or the rising pressures on the military's professional norms and values.⁵⁸ It is questionable whether PSCs are a cause or a symptom of these changes. Similarly, it is doubtful if PSC regulation alone can meaningfully address these concerns. It is also debatable whether regulation should address the redistribution of power in the political system and the liberalized access to security services by protecting the *status quo* or by advancing its reform? Surely, the mere fact that the use of PSCs brings about change cannot constitute a justification for restrictive regulation. Moreover, the literature fails to explain how PSCs would benefit from undermining states' control of force or the effectiveness of the state-

⁴⁹ Avant (2006), p. 512ff., Isenberg (2009), p. 13, Elliott (2010).

⁵⁰ Avant (2006), p. 341. Singer (2007 II), p. 8.

⁵¹ Leander (2007), p. 55-60, Lehnhardt (2007), p. 156.

⁵² Leander (2005), p. 615, Avant (2005), p. 26, Garmon (2003).

⁵³ Sheehy *et al* (2009), p. 2.

⁵⁴ *Ibid.*, p. 3, see also Avant (2005), p. 44, Cowen (2007).

⁵⁵ Leander (2005), p. 606, Sheehy *et al* (2009), p. 22.

⁵⁶ Renou (2005), p. 110, Stanger (2009), p. 94, Walker/Whyte (2005), p. 689.

⁵⁷ O'Brien (2007), p.33, Kinsey in Armstrong (2008), p. 248.

⁵⁸ See the discussion on the post-modern military in Moskos *et al* (2000).

organized military, given that public sector contracts constitute a significant share of their demand⁵⁹ and that PSCs cannot operate in high risk environments without the support of the military.⁶⁰ Indeed, Christopher Coker suggests that '[PSCs] have never sought to challenge states'.⁶¹

Moreover, while the US government has used PSCs in support of covert CIA operations,⁶² claims that PSCs facilitate illegal and illegitimate behaviour seem exaggerated, as states hardly depend on private sector resources for "plausible deniability". Finally, the regulatory debate fails to give adequate consideration to the benefits of PSC use, especially with respect to private sector clients.⁶³ To name but two: PSCs provide crucial capabilities that would otherwise be unavailable or prohibitively expensive. Interviews suggest that, even for large multinational companies, it is not economical to develop sophisticated in-house security capacities to deal with threats like kidnapping and terrorism.⁶⁴ Also, PSCs allow IOs, NGOs and private contractors to operate in the face of significant physical insecurity, which, in turn, allows mission-critical civilian reconstruction efforts, such as the provision of clean water and electricity, to commence much earlier in post-conflict environments.⁶⁵

Conclusion

Had these considerations been taken into account, a more balanced view of the impact of PSCs on the control of force would likely have emerged. While this would scarcely obviate the need for regulation, it lessens the need to restrict PSC activity, making less drastic forms of regulatory intervention palatable.

⁵⁹ Claridge (2010), Spicer (2009).

⁶⁰ Eriny (2005), p. 11.

⁶¹ Coker (1999), p. 111.

⁶² Examples include Blackwater (Pelton (2006), p. 41) and Custer Battles (Miller (2006), p. 174).

⁶³ Authors generally treat the benefits of PSCs perfunctorily (for exceptions, see Schreier/Caparini (2005), p. 80-82, Avant (2007), p. 420-421).

⁶⁴ Ashwell (2008), Schenz (2009).

⁶⁵ Brooks (2000), p. 33ff.

Section Four: Reasons for Regulation II: Accountability

Criticism against PSCs is generally not focused on their behaviour - after all, the prevalent behavioural model expects them to be unreliable and disloyal - but on the impunity with which such behaviour can be pursued.⁶⁶ Critics highlight this alleged lack of accountability by comparing PSCs to state-organized militaries, suggesting that they should be held accountable to 'the same standard as regular soldiers'.⁶⁷ Given that PSCs, as corporate entities, cannot be incarcerated, some even propose a corporate accountability standard akin to command responsibility,⁶⁸ which would extend criminal liability to those holding managerial responsibility. While such a drastic extension of accountability is impracticable, as it, for instance, would question the crucial principle of limited liability in contemporary business,⁶⁹ it illustrates the literature's high expectations for PSC accountability.

Any notion that effective PSC regulation, especially if it is meant to satisfy such high expectations, can be established "at a brushstroke" fails to appreciate the complexities involved.⁷⁰ For instance, competing interests need to be reconciled, often across different regulatory cultures.⁷¹ Regulation also must be flexible enough to, in the short-term, respond to the operational environment and the type of task being performed and, in the long-term, accommodate the constantly evolving market for private security services.⁷² It also has to be able to distinguish between fraud and unintentional oversight, often a result of challenging operational environments and complex contracting regulations. Finally, the regulatory burden for the industry has to be kept at a minimum. This means limiting the costs of regulation and its disruptions to the work of PSCs. Codified, formal regulation akin to that holding state-organized militaries accountable is likely to be costly and inflexible. Such regulation may force smaller PSCs out of business, increasing the market power of the remaining PSCs and thus making them harder to control.⁷³ Also, higher prices could render PSC services unaffordable to many consumers, particularly NGOs, which cannot pass on costs to their customers. Therefore, replicating the military's accountability structure in the

⁶⁶ Cockayne *et al* (2008), p. 3, Del Prado in Century Foundation (2007), Spear (2006), p. 5.

⁶⁷ Percy (2006), p. 23, Cusumano (2009), p. 8.

⁶⁸ Sheehy *et al* (2009), p. 59-61, Maogoto/Sheehy (2010), p. 116ff, Nance (2007).

⁶⁹ Economist (2012).

⁷⁰ Reed (2010).

⁷¹ Sheehy *et al* (2009), p.127-138.

⁷² Ortiz (2004), p. 206, Dickinson (2007), p. 220.

⁷³ Phillips (2010), Claridge (2010), Mark Lonsdale (Hart Security) in Isenberg (2009), p. 148.

private sector is complicated, costly and likely ill-suited for the PSI. Moreover, the discussion above emphasises that stricter regulation may hurt, rather than help the desired regulatory outcome.

Moreover, using the state-organized military as the standard of accountability for the PSI narrowly focuses the regulatory debate on formal regulation as a means to attain it. Instead, relying on informal means that are unique to the private sector may produce a better regulatory outcome. Aside from the aforementioned fiduciary duties, companies depend on licenses and charters to operate, requirements for which can be expanded to include accountability measures.⁷⁴ Also, PSCs are subject to tort law, contract law and insurance regulations,⁷⁵ not to mention sector-specific regulations that apply to PSCs due to their contractual relationship to their clients.⁷⁶ Regulators can also exert pressure on their private sector clients to increase PSC accountability⁷⁷ and governments could directly control PSCs through the ownership of “golden shares” or through changes to the composition of their boards.⁷⁸ So far, such informal accountability measures have been rejected as insufficient, because their sanctions are restricted to financial punishments. However, unlike state-organized militaries, the institutional survival of PSCs is dependent on their profitability,⁷⁹ which gives financial sanctions so far unrecognized punitive power, especially as most UK PSCs have limited financial means and access to credit.⁸⁰

Conclusion

Thus, viewing PSCs less through a military and more through a corporate “lens” opens up a wealth of regulatory options hitherto unrecognized by the literature. Moreover, such informal regulation is seemingly much better adapted to governing the PSI, as it is unencumbered by the regulatory costs and unintended consequences of formal regulation and because it makes greater use of the unique regulatory features of the private sector.

⁷⁴ Sheehy *et al* (2009), p. 39-43, FCO (2002), p. 22-27.

⁷⁵ Ulam-Weiner (2006), p. 23-24, Dickinson (2007), p. 236ff, Miller in COR XIV (2009).

⁷⁶ While PSCs generally do not subject themselves to external CSR auditing, they may have to participate in their clients’ audits.

⁷⁷ Such pressure need not have the force of law, given the private sector’s sensitivity to negative publicity (Sorge (2009), Schenz (2009)).

⁷⁸ Sheehy *et al* (2009), p. 60-63.

⁷⁹ Hammes in Armstrong (2008), p. 89.

⁸⁰ Phillips (2010). US PSCs are often part of larger concerns (DynCorp) or they can draw the considerable wealth of their private owners (Blackwater).

Section Five: Reasons for Regulation III: Transparency

The lack of transparency, particularly the industry's reluctance to share information, is believed to be a serious obstacle to PSC control and accountability and, hence, a reason for regulation.⁸¹ However, little effort has been made to determine why the industry insists on corporate confidentiality and whether this insistence is at all justified. While PSCs often cite commercial and operational reasons,⁸² client preferences may actually be primarily responsible for PSCs' reluctance to share information. Interviews suggest that many private sector customers do not want to be publicly associated with PSCs to protect their reputation and fend off liability.⁸³ Indeed, one PSC client stated: 'I don't mind telling you who we work with, but if one of the companies [we work with] had given you our name, we would be concerned'.⁸⁴ Therefore, the lack of transparency, even if perpetuated by PSCs, is not necessarily of their own volition.⁸⁵ Hitherto, the literature primarily focuses on PSCs as regulatory targets, not on their commercial context. Unilaterally forcing greater transparency on PSCs may adversely affect their business, while providing little regulatory impact, as customers that value corporate confidentiality would likely switch to PSCs outside the regulatory jurisdiction.

While commercial and operational reasons may justify some limits on transparency, attempts by PSCs to cover up misconduct are clearly unacceptable.⁸⁶ However, it is again questionable if such behaviour is best addressed by unilaterally imposing greater transparency on the industry, as this could ultimately aggravate existing tendencies towards concealment. PSCs consider their defensive information strategy to be a response to a biased media-environment, as criticism frequently distorts the difference between individual transgressions and corporate wrongdoing, causing PSCs to be criticized for the actions of individual employees.⁸⁷ Moreover, PSCs believe their efforts and limited ability to prevent and punish employee misconduct are insufficiently recognized: 'We can't flog him. We can't incarcerate him'.⁸⁸ While regulators can do little to create a more PSC-friendly media

⁸¹ Percy (2006), p. 21, Bailes/Holmqvist (2007), p. 7. PSCs are exempt from FoI requests (Isenberg (2009), p. 20, Shane/Nixon (2007)).

⁸² Donald (2006 II), p. x, Spicer (2009), Willis-Fleming (2009), Rosemann (2008), p. 8.

⁸³ Sorge (2009), Schenz (2009).

⁸⁴ Priestley (2009).

⁸⁵ Isenberg (2004), p. 72, Bearpark/Schulz (2007), p. 243.

⁸⁶ Independent (2007), Scahill (2007 II).

⁸⁷ O'Brien (2007), p. 40, Isenberg (2010), Donald (2006 II), p. 6.

⁸⁸ Eric Prince in Washington Post (2007). See also Spicer (2009), Brooks in Combat Operator Radio (2009 II).

environment, they can employ policies that reduce the costs of cooperation for PSCs, i.e. confidentiality clauses and leniency agreements. Such policies would make PSCs' actions more transparent for regulatory purposes without exposing PSCs to the negative publicity they and their customers are concerned about.

So far, such concerns have not featured prominently in the regulatory debate due to the literature's scepticism (and sometimes outright resentment) towards equal industry participation in the development of regulation: 'After all, policy-makers do not turn to tobacco companies for advice on health issues'.⁸⁹ This highlights a broader conflict between the PSC literature's and the industry's regulatory aims. PSCs complain that, rather than unregulated, they are inundated by a wealth of often conflicting laws and regulations.⁹⁰ Interviews with PSC representatives suggest that the industry is primarily interested in making PSC regulation less complex and costly, easier to comply with and more meaningful in its guidelines.⁹¹ In contrast, the PSC literature seemingly puts greater emphasis on regulatory comprehensiveness than on reducing its complexity and costs.⁹² Echoing its bias to focus on PMCs, the PSC literature's guiding principle seems to be that, in a critical area like the use of force, normative rather than economic concerns should be the determining, possibly even the only factor driving the regulatory debate.⁹³ Indeed, some authors even advocate that the industry's financially motivated concerns need to be excluded from the regulatory process, as, otherwise, it 'is unlikely to achieve more than the lowest common denominator in terms of ethical standards'.⁹⁴

The above discussion challenges this antagonistic, arms-length approach to PSCs regulation. First, its underlying assumption that PSCs have little interest in effective regulation fails to appreciate how the industry would benefit from clearer standards. Regulatory clarity would make it easier for the industry to attract outside financing, as 'investors prefer a stable, certain regulatory environment'⁹⁵ and it would give PSCs legal certainty, making it easier to

⁸⁹ Sheehy *et al* (2009), p. 95.

⁹⁰ Tim Spicer at Hilary (2007), Spicer (2009), Chris Taylor in Isenberg (2009), p. 153.

⁹¹ Willis-Fleming (2009), Beese (2006)

⁹² Percy (2006), p. 66-67. Publications either omit regulatory costs (Schaller (2005), Bailes/Holmqvist (2007), Ortiz (2004)) or treat the subject perfunctorily (Schreier/Caparini (2005), p. 126). To date, the most detailed study on regulatory costs and its market impact was produced by the UK's Foreign and Commonwealth Office (FCO (2009 II)).

⁹³ Percy (2007), p. 28.

⁹⁴ Cockayne *et al* (2009), p. xvi.

⁹⁵ Brauer (2006), p. 6. See also Cockayne *et al* (2009), p. 3-4.

address allegations of improper conduct and to quantify liability risks in the case of legal proceedings. Furthermore, effective regulation would provide a yardstick for assessing PSCs' performance, which would enhance quality- rather than price-driven competition. Secondly, unless the aim is to ban PSC services altogether, regulatory effectiveness depends on the industry's cooperation.⁹⁶ Such cooperation is unlikely if PSCs' concerns are not sufficiently taken into account, i.e. if it entails an unreasonable regulatory burden and no provisions to compensate for it.⁹⁷ Rather than complying with it, PSCs may either try to circumvent such regulation or leave the market for security services,⁹⁸ which would decrease competition, making it harder to control the remaining market participants.

Conclusion

While greater transparency is undeniably important, finding the best means by which to achieve it is a more complicated issue. In particular, this section has shown that it is not sufficient to focus solely on PSCs when it comes to assessing the relative merit of different measures to increase transparency. Instead, the context in which PSCs operate, especially their clients, also has to be considered. Taking this into account, this section has shown that the antagonistic approach to PSC regulation that many authors advocate may harm, rather than help transparency. A similar argument can be made for control and accountability.

Section Six: Reasons for Regulation IV: Growth of the Industry

The literature presents three reasons for why regulation is necessary for shaping the future growth of the PSI. First, drawing on Weber's definition of statehood, critics claim that broadening access to security services threatens the modern state's successful claim on the monopoly of the legitimate means of violence - a constitutive norm in international relations and law - and that restrictive regulation is required to reassert the pivotal role of states in the international system.⁹⁹ Secondly, unregulated growth in the PSI is believed to aggravate problems with military effectiveness. An increased use of PSCs could cannibalize the armed forces to the point of unsustainability, as the PSI's more competitive wages lure soldiers into

⁹⁶ Sheehy (2009), p. 135, Bearpark/Schulz (2007), p. 245, Percy (2006), p. 39.

⁹⁷ FCO (2010), § 32.

⁹⁸ The UK government considers such a regulatory outcome to be unacceptable (FCO (2009 II), p. 21-23, Reed (2010)).

⁹⁹ Eppler (2008), Wodarg (2008).

the private sector.¹⁰⁰ Finally, some authors draw on economics to argue that the PSI suffers from market failure that needs to be corrected by regulatory intervention. For example, Chesterman and Lehnhardt claim that the PSI 'falls short of being a fully developed market' due to its lack of competition,¹⁰¹ while Cockayne *et al* suggest that the social costs of using PSCs are externalized¹⁰² and Sarah Percy argues that a lack of information disadvantages PSC customers and thus causes market failure.¹⁰³ While control, accountability and transparency constitute valid reasons for regulation, closer scrutiny of the arguments for regulation to control the future growth of the PSI expose considerable flaws.

State Sovereignty and the Monopoly on Violence

Calls to 'safeguard [...] the state monopoly on the use of force'¹⁰⁴ vastly oversimplify its theoretical foundation. Elke Krahmann points out, Weber's definition of the state is descriptive not proscriptive,¹⁰⁵ while Lynch and Walsh challenge the implied superiority of the state monopoly on violence by juxtaposing an ideologically neutral private force and a state 'with dubious moral and legal foundations'.¹⁰⁶ Deborah Avant contends that the monopoly of force does not accurately describe the historical reality prior to the emergence of the PSI and argues that PSCs need not challenge the state monopoly of force.¹⁰⁷ Finally, Kevin O'Brien suggests that 'idealized notions of the international security system' obstruct the regulatory debate.¹⁰⁸ Especially Avant's and O'Brien's criticisms indicate a change in the attitudes towards the state - a process Walker and Whyte have referred to as "rescaling" the state.¹⁰⁹ Given that this process is ongoing and that governments may face very different operational requirements, market environments and public attitudes towards security privatization in the future, it seems unwise to create regulation that definitively demarcates the boundaries of privatization at this point in time.

¹⁰⁰ Armstrong (228), p. 101, Gomez del Prado (no date), p. 2.

¹⁰¹ Chesterman/Lehnhardt (2007), p. 6.

¹⁰² Cockayne *et al* (2008), p. 3-4, Wagner (2010), p. 25.

¹⁰³ Percy (2006), p. 54, Avant (2007), p. 188-189.

¹⁰⁴ Wodarg (2008), p. 3.

¹⁰⁵ Krahmann (2010), p. 21.

¹⁰⁶ Lynch/Walsh (2000), p. 152. See also Howe (2001), p. 2.

¹⁰⁷ Avant (2005), p. 2, 65ff. See also Ortiz (2009), p. 4-5, Stange (2009), p. 45.

¹⁰⁸ O'Brien (2007), p. 33-34.

¹⁰⁹ Walker/Whyte (2005), p. 688.

Military Effectiveness

As to the charge that PSCs “cannibalize” the armed forces, retention was ‘at historical lows’ at the height of the PSI boom, but so was recruitment, which suggests a general undesirability of the military profession rather than competition from PSCs was responsible.¹¹⁰ Moreover, once non-cash and deferred benefits are included, authors suggest that there is little disparity between wages in the military and the PSI.¹¹¹ Such comparisons are somewhat flawed, as they calculate in-kind compensation and deferred benefits at full value, which assumes the absence of inflation and a perfect match between soldiers’ preferences and the non-monetary compensation they receive. However, employment in the PSI exposes most soldiers to greater physical risks¹¹² and lower job security due to the prevalence of short-term contracts.¹¹³ Moreover, PSCs offer considerably less social prestige and little support, especially on family or insurance matters.¹¹⁴ Once these benefits are factored in, the appeal of leaving for the PSI seems to be rather limited for most active duty personnel.

The same cannot be said for specialists, particularly SOF personnel. While exact statistics on the number of SOF personnel leaving for the private sector are unavailable,¹¹⁵ the DoD’s and MoD’s decisions to offer substantial retention bonuses and pay-increases are testament to the PSI’s attractiveness to SOF personnel.¹¹⁶ Several reasons make SOF personnel particularly attractive to the PSI: Aside from their proven ability to operate in hostile environments, their elite status causes them to function as a ‘regulatory surrogate’, giving them significant ‘promotional value’.¹¹⁷ Given this continued attractiveness, which translates into monthly wages of up to \$33,000,¹¹⁸ Christopher Spearin believes SOF should not be treated as ‘individuals requiring incentives’, but rather as a strategic resource’.¹¹⁹

However, there is a moral argument to be made against regulation that prevents soldiers from leaving for the PSI. Until recently, establishing the true value of SOF personnel’s work

¹¹⁰ CBO (2006), p. xii-xi, NAO (2006), p. 1.

¹¹¹ Isenberg (2009), 59ff, Avant (2006), p. 333-334.

¹¹² Krott in COR XII (2009). See also Miller (2010), Fainaru (2008), p. 129ff.

¹¹³ Loe (2010), Lynch (2010).

¹¹⁴ On family matters, see Fainaru (2008), p. 143. On insurance, see Miller in COR XIV (2009).

¹¹⁵ Spearin (2006), p. 60. UK SOF allegedly lost nearly 25% of its personnel to the private sector (Bruce (2006), while the Australian SAS lost 8% (Walker (2004).

¹¹⁶ Burgess (2008), Norton-Taylor (2006).

¹¹⁷ Spearin (2006), p. 63. See also Chapter 4 Section 7.

¹¹⁸ GAO (2005), p. 36.

¹¹⁹ Spearin (2006), p. 66.

was impossible, as the states' monopoly of force had prevented the emergence of a legitimate market for their services.¹²⁰ While military pay is considered fair – a recent DoD study found it exceeds 75% of civilian occupations adjusted for age and education¹²¹ – such comparisons undervalue the unique skills of soldiers and the hardships of military life, which translate poorly into the private sector and to which SOF personnel have an above-average exposure. If wages in the PSI show that the work of SOF personnel is undervalued, this should be addressed by reforming the military's pay system, not by depriving soldiers of their freedom of occupational choice.¹²² This is particularly true as military service is rarely synonymous with a life-long career and because combat veterans struggle most when it comes to reintegrating into the civilian workforce.¹²³

Market Failure

Finally, the literature's suggestion that regulation is needed to prevent market failure in the PSI is questionable. Chapter Four showed that the supposed "lack" of competition in the PSI does not constitute a market failure.¹²⁴ Likewise, Chapter Five pointed out that information asymmetries favouring PSCs are temporary, allowing customers to punish previously undiscovered PSC misconduct at a later stage in their contractual relations.¹²⁵ Moreover, the industry's increasing professionalism and improvements in public sector contracting suggest that the aforementioned problems are temporary growing-pains rather than structural problems necessitating regulatory intervention.¹²⁶

Externalities are a slightly different matter, because they affect third parties, specifically the local population, which sustain costs as a result of PSC contracts without being party to them.¹²⁷ Ordinarily, such externalities can be internalised by their victims through the legal system,¹²⁸ but PSCs are often granted immunity from local prosecution. Creating regulation to internalize these externalities by limiting PSCs' immunity, however, risks exposing

¹²⁰ Ulam Weiner (2006), p. 25.

¹²¹ Tighe Murray (2010), p. 1.

¹²² Isenberg (2009), p. 61.

¹²³ Prigerson *et al* (2001), p. 99ff, Iversen *et al* (2005), p. 175.

¹²⁴ See Chapter Four, Section One.

¹²⁵ See Chapter Five Section XXX.

¹²⁶ See Chapter Two and Chapter Three Part II.

¹²⁷ Externalities are not necessarily negative, as security provided to a client can "spill-over" into the surrounding community. (Brauer (2006), p. 3).

¹²⁸ On internalising externalities, see Coarse (1960), p.17ff.

contractors to arbitrary justice.¹²⁹ This highlights a broader problem with regulation aimed at correcting market failure: Arguments in its favour assume that regulatory intervention increases market efficiency – a notion that classical economists dispute. They, instead, suggest that free markets are generally efficient and that only ‘exceptional circumstances [...] warranted intervention’.¹³⁰ Research by, among many others, Stiglitz and Greenwald, however, has shown that free markets are rarely efficient.¹³¹ Nevertheless, the fact that free markets fall short of the theoretical market optimum does not imply that regulatory interventions necessarily increase efficiency.¹³² Regulatory intervention often has unintended consequences, which can outweigh its intended benefits and result in a net welfare loss. Hence, many economists maintain that, while free markets may not reach optimum efficiency, they remain more efficient than other means of allocating goods and services.¹³³ For regulation to successfully correct market failure, its net welfare effect ought to be positive. Given its limited understanding of the economic aspects of PSC behaviour, it seems unlikely that the current PSC literature’s regulatory proposals would meet this criterion.

Another issue that needs to be considered with respect to state sovereignty, military effectiveness and market failure alike, is the problem of moral hazard on the part of those advocating greater regulation. Even if a need for regulation to correct market failure or to preserve the primacy of the state in the international system can be identified, it is by no means certain that policy-makers will not pursue their own interest when regulating the PSI.¹³⁴ Likewise, the military’s concerns about PSC use and operational effectiveness may be partly motivated by self-interested concerns about diminishing opportunities for promotion in and the societal relevance of a “slimmer” state-organized military.

Conclusion

The discussion about the growth of the industry as a reason for regulation suggests that the PSC literature is more concerned with making the case for regulation than to fully take into account its implications and costs. Moreover, the PSC literature’s neglect of moral hazard in

¹²⁹ Isenberg (2009), p. 153.

¹³⁰ Stiglitz (2009), p. 11.

¹³¹ Greenwald/Stiglitz (1986). See also Akerloff (1970).

¹³² LeGrand (1991), p. 427.

¹³³ Mankiw (2000), p. 10-11, 172, Medema (1996), p. 571, LeGrand (2003), p. 12, Levacic (1991), p. 22, Vickers (1991), p. 163ff).

¹³⁴ Stiglitz (2009), p. 13.

government regulation suggests that it has fallen victim to a “Nirvana fallacy”: it compares an existing, imperfect arrangement, i.e. the market for private security services, to an abstract, ideal regulatory state, i.e. perfect government regulation.¹³⁵

Conclusion Part I: Regulation as a Zero-Sum Game with High Stakes

Two themes emerge from the above analysis. First, the literature considers the stakes to be high when it comes to PSC regulation, despite the fact that, according to Eugenio Cusumano, ‘the paupacity of reliable data and quantitative studies [makes] a systematic assessment of PMSCs’ compliance with the existing *ius in bello* [and] their impact on local population[s] [...] impossible’.¹³⁶ The literature’s concerns are therefore less fuelled by actual PSC behaviour than by the importance of the values - military effectiveness, democracy, state sovereignty - that PSC use allegedly threatens. Some authors even consider PSCs to be ‘inherently antidemocratic’¹³⁷ and capable of ‘destroy[ing] democracy’,¹³⁸ i.e. PSCs possess not just the will, but also the ability to threaten the aforementioned values. This assertion stands in stark contrast to the limited power contemporary PSCs have at their disposal - financially, militarily or otherwise. Contrary to some authors’ claims,¹³⁹ interviews suggest that UK PSCs have only limited access to capital and thus a limited ability to increase their capabilities.¹⁴⁰ Militarily, the power of PSCs is also severely limited and pales in comparison with most nation states.¹⁴¹ Finally, the literature seems to have little faith in the resilience of state institutions when faced with the potential challenges posed by PSCs.

Hence, there seems to be a discrepancy between the PSC literature’s perception and the actual negative impact of PSC use, which even the desire to err on the side of caution cannot fully explain. Here the second theme comes into play, which centres on the literature’s view on PSC behaviour. The literature’s *leitmotiv* for understanding PSC behaviour is their self-interested desire for financial profit, which essentially makes PSC regulation a zero-sum game: Unless every aspect of their behaviour is tightly controlled, PSCs will exploit any

¹³⁵ On the Nirvana fallacy, see Demsetz (1969), p. 1ff.

¹³⁶ Cusumano (2009), p. 5.

¹³⁷ Sheehy *et al* (2009), p. 4.

¹³⁸ Uessler (2008).

¹³⁹ Garmon (2003), Sheehy *et al* (2009), p. 4.

¹⁴⁰ Phillips (2010), Claridge (2010). See also Tabarrok (2007), p. 576.

¹⁴¹ Isenberg (2009), p. 14. See also Chapter 2 Section 2.

loophole the regulatory framework provides to engage in problematic behaviour. This zero-sum approach explains the disregard for the industry's voice in the regulatory debate and the PSC literature's insensitivity to the costs and limitations of PSC regulation. In such a zero-sum game, even significant regulatory costs or deadweight losses are deemed acceptable, given the likelihood and costs of regulatory failure. Moreover, the zero-sum approach influences the preferred outcome of the regulatory debate: Regulatory options, which rely on cooperation and mutual good-will, are deemed to be ineffective, while restrictive regulation, intrusive monitoring and stiff sanctions are supported as a means for controlling PSCs, despite their considerable costs.

This section criticised this approach to PSC regulation on three points: (1) It stressed the need for a more balanced assessment of the impact of PSC use on the control of force, (2) it challenged the literature's standard of PSC accountability and the effectiveness of the proposed means to attain it, and (3) it rejected the literature's arguments for regulating the future development of the PSI and criticised its implicit faith in the effectiveness of government regulation. In conclusion, it bears repeating that this thesis does not dispute the need for regulation. Indeed, this section noted several points where greater control, accountability and transparency are urgently needed in the PSI. Instead, this thesis criticises the literature's approach to regulation, arguing that a more differentiated view of PSC behaviour would allow for less drastic regulatory intervention, while providing more effective control, accountability and transparency.

The following section continues the critical appraisal of the literature's view on PSC behaviour and its regulation by reviewing its assessment of the regulatory *status quo*. It shows that the zero-sum approach provides the yardstick against which the literature assesses all existing PSC regulation.

Part II: The Regulatory Status of PSCs

While most authors reject the claim that PSCs operate in a 'legal vacuum',¹⁴² existing **international**, **domestic** and **self-regulation** are seen as exerting insufficient control over PSCs.

Section Seven: International Regulation

A common point of departure in the discussion about international law and PSCs are the OAU and UN Conventions against the use of mercenaries.¹⁴³ Both conventions are essentially blanket bans that are 'solely concerned with outlawing mercenary activities'.¹⁴⁴ These conventions were drafted in response to mercenary activities in Africa in the 1960-1970s. Authors consider the conventions' definitions of mercenaries to be inapplicable to PSCs.¹⁴⁵ Another frequently discussed issue is the status of contractors on the battlefield.¹⁴⁶ Again, the drafting of the relevant norms significantly predates the emergence of the PSI. Article 47 of Protocol I to the Geneva Convention seeks to abolish mercenaries by denying them 'the right to be a combatant or a prisoner of war'.¹⁴⁷ Yet, the PSC literature considers its definition of mercenaries to be likewise inapplicable to PSCs.¹⁴⁸ Thus, despite significant academic interest in the status of PSCs under international law,¹⁴⁹ existing norms seems to have little regulatory impact on the quotidian behaviour of PSCs.¹⁵⁰ Moreover, despite its many misgivings about the PSI, the PSC literature is opposed to international laws banning PSCs. Such a blanket ban is widely considered to be 'counterproductive',¹⁵¹ as it would lack

¹⁴² Dickinson (2007), p. 217, Walker/Whyte (2005), p. 687. For opposing views, see Singer (2004 IV), p. 524, Catan (2005), Gomez del Prado (no date), p. 2.

¹⁴³ OAU (1977), UN (1989).

¹⁴⁴ Spear (2006), p.47.

¹⁴⁵ Singer (2004 IV), p. 524, Doswald-Beck (2007), p. 122, Zarate (1998), p. 120, Stinnett (2005), p.216, Gaston (2008), p. 228-229.

¹⁴⁶ Percy (2006), pp. 18-19, Gaston (2008), p. 231ff., Finke (2009), p. 10-23.

¹⁴⁷ UN (1977).

¹⁴⁸ Walker/Whyte (2005), pp. 678-679, Spear (2006), p. 48.

¹⁴⁹ Zarrella (2008), p. 3, Kidane (2010).

¹⁵⁰ Percy (2006), pp. 19.

¹⁵¹ Leander (2005), p. 610.

political support,¹⁵² violate states' rights for self-defence,¹⁵³ be unenforceable¹⁵⁴ and forsake the benefits of using PSCs.¹⁵⁵

Still, considerable effort has gone into discussing the potential advantages international regulation could bring to the regulation of PSCs. For example, some argue that internationalizing PSC regulation would give developing countries greater influence over the regulatory debate and enhance their limited monitoring and enforcement capacity.¹⁵⁶ It is also said to possibly counter the threat of domestic regulatory capture by taking enforcement out of the hands of national governments,¹⁵⁷ and that its global reach would limit PSCs' ability to evade regulation.¹⁵⁸ Regardless of its considerable hypothetical potential, until recently the chances for effective international regulation to emerge were considered slim.¹⁵⁹ Influenced by lobbying,¹⁶⁰ an erroneous faith in the cost-effectiveness of security privatization¹⁶¹ and the desire not to limit their own use of PSCs,¹⁶² policy-makers were believed to lack the necessary political will for its creation.¹⁶³ Still, authors maintain that international regulation is 'unquestionably necessary'¹⁶⁴ and an 'inevitable part of the solution to regulating PSCs'.¹⁶⁵ Indeed, the emerging debate on "state responsibility", i.e. the legal and moral responsibility of states for the actions of PSCs, seems to target this perceived lack of regulatory will.¹⁶⁶

The Montreux Document

In September 2008, seventeen countries signed the Montreux Document,¹⁶⁷ which both exemplifies and qualifies the literature's assessment. The document acknowledges states' responsibilities in their use of private security providers and substantiates these responsibilities through 70 recommendations for best practices. On the one hand, it shows

¹⁵² Gaston (2010), p. 241, Cockayne *et al* (2008), p. 50.

¹⁵³ Taylor in Jennings (2006), p. 29.

¹⁵⁴ Schreier/Caparini (2005), p. 118.

¹⁵⁵ FCO (2002), Annex C, §10.

¹⁵⁶ Percy (2006), p. 65.

¹⁵⁷ Cockayne *et al* (2008), p. 28.

¹⁵⁸ Finke (2009), p. 39.

¹⁵⁹ Holmqvist (2005), pp. 45-46.

¹⁶⁰ Holmqvist (2005), p. 30, Caparini (2007), p. 176.

¹⁶¹ Ulam Weiner (2008), Petersohn (2008), p. 2.

¹⁶² Isenberg (2009), p. 52.

¹⁶³ Spear (2006), p. 42, Finke (2009), p. 36, Human Rights First (2008), 23ff.

¹⁶⁴ Percy (2006), p. 52.

¹⁶⁵ Sheehy *et al* (2009), p. 170.

¹⁶⁶ Lehnhardt (2007), p. 154, Finke (2009), p. 27-28, Gaston (2010), p.240ff.

¹⁶⁷ Swiss Department of Foreign Affairs/ICRC (2008).

that international agreement on PSCs can indeed be obtained. Through their signature, the signatory countries, which include the main consumers of private security services, accepted their responsibility under international law to regulate the PSI and thus created an expectation that future regulation will be internationally coordinated. On the other hand, it is too early to accurately assess the Montreux Document's long-term impact, as many of its signatories have yet to take tangible steps to honour their regulatory commitments. The Montreux Document also does not carry the legal weight of an international treaty,¹⁶⁸ and its content has already been criticized for being non-binding¹⁶⁹ and for the vagueness of its "due diligence" provisions.¹⁷⁰ Moreover, the negotiating process highlighted the participating nations' conflicting legal traditions and political interests.¹⁷¹ Future efforts to create more definitive and binding PSC regulation may aggravate these conflicts, making their success questionable at best.

Finally, the biggest hurdle for any piece of international regulation is its enforcement¹⁷² - an aspect that even the Montreux Document left largely unaddressed. To assure effective enforcement, many authors would prefer PSC regulation to be administered through an international regulatory body with an independent capacity to monitor and sanction misconduct.¹⁷³ However, few fully independent, international regulatory institutions exist and the costs involved in their creation are hardly encouraging.¹⁷⁴ More importantly, states are often reluctant to concede jurisdiction to an international institution, because said institutions are often neither directly democratically legitimized nor accountable to domestic law. Hence, there is little to suggest that a sufficiently strong, shared regulatory interest exists to overcome this reluctance.

Conclusion

Thus, despite the recent success in creating the Montreux Document, the prospects for effective international regulation are considered to be limited. Fred Schreier and Marina Caparini echo a widely held belief by suggesting that a lack of political will is the 'biggest

¹⁶⁸ Swiss Department of Foreign Affairs/ICRC (2008), p. 42.

¹⁶⁹ Gomez del Prado (no date), p. 4.

¹⁷⁰ Bearpark in Cockayne (2008), p. 426, Amnesty (2008), p. 2.

¹⁷¹ Cockayne (2008), p. 419-425.

¹⁷² Jennings (2006), p. 26, Singer (2004 IV), p. 527, Cockayne (2008), p. 427ff.

¹⁷³ Some authors propose expanding the ICC (Singer (2003 IV), p. 546, Jennings (2006), p. 51).

¹⁷⁴ Bearpark/Schulz (2007), pp. 243-244. See also Percy (2006), p. 64.

obstacle to [effective international] regulation'.¹⁷⁵ However, this argument underestimates the substantial challenges international PSC regulation faces in such critical areas as burden-sharing, jurisdiction and enforcement. Again, this creates a "Nirvana fallacy": the literature's overly-optimistic assessment of its prospects creates the illusion that international PSC regulation with its many benefits is attainable. As a result, the PSC literature's perception is distorted. Especially regulatory alternatives, which are more restricted in their reach but easier to implement than international regulation, are undervalued.

Section Eight: Domestic Regulation

Given the transnational nature of its business, a UK PSI could easily fall under the jurisdiction of half a dozen states or regional bodies while serving a single contract. The ensuing complexity is further increased by the wealth of laws applicable to PSCs. Arguably, it is this panoply of domestic laws that lends credence to the assertion that PSCs do not operate in a "legal vacuum". Still, the PSC literature argues that this regulatory 'web' is insufficiently tight.¹⁷⁶

A Review of Select Domestic Regulations Applicable to PSCs

For instance, laws prohibiting the recruitment of citizens by foreign powers, e.g. the 1870 UK Foreign Enlistment Act (FEA), are products of bygone eras and incompatible with contemporary interpretations of individual liberties.¹⁷⁷ Moreover, their poor enforcement history – not a single conviction has been reached based on the FEA – led Simon Mackenzie to conclude that the FEA is 'a complete failure as a legal tool'.¹⁷⁸

Similarly, the US *International Traffic in Arms Regulation* (ITAR) exemplifies why, despite the promise many authors see in licensing as a regulatory tool,¹⁷⁹ the laws governing the arms trade are ill-suited to governing the PSI.¹⁸⁰ First, ITAR's trigger for congressional accountability is too high at \$50 million and too easily evaded by splitting large contracts

¹⁷⁵ Schreier/Caparini (2005), p. 29. See also Jennings (2006), p. 9, Spear (2006), p. 42, McCoy (2009), p. 18.

¹⁷⁶ Percy (2006), p. 9.

¹⁷⁷ *Ibid.*, p. 33.

¹⁷⁸ Mackenzie (1999), p. 52.

¹⁷⁹ O'Brien (2007), p. 42, Bearpark/Schulz (2007), p. 245.

¹⁸⁰ For a discussion of ITAR's UK equivalents, see Walker/Whyte (2005).

into smaller ones.¹⁸¹ Secondly, ITAR's oversight stops with the granting of export licenses and fails to provide the continuous monitoring necessary to control PSCs.¹⁸² Finally, ITAR has been criticised for being inconsistent and lacking transparency in its licensing process amid suggestions that it is 'more concerned with US foreign policy than with provisions within international law'.¹⁸³

Likewise, South Africa's *Foreign Military Assistance Act* (FMAA), the most substantial piece of regulation that is specifically aimed at PSCs to date, is hardly considered a promising template for future regulation. Like ITAR, its authorization process is unpredictable and not transparent.¹⁸⁴ Also, while the Act's reach extends in theory beyond South Africa, it lacks institutional capacity for transnational monitoring and enforcement.¹⁸⁵ Moreover, FMAA's regulatory approach restricts and criminalizes PSCs' activities rather than controlling them.¹⁸⁶ Finally, it is testament to its regulatory ineffectiveness that hundreds of South Africans continue to work for PSCs in Iraq in violation of the FMAA.¹⁸⁷

Rather than creating regulation specifically aimed at PSCs, the US government expanded domestic jurisdiction to private contractors "in theatre" through the *Military Extraterritorial Jurisdiction Act* (MEJA). Yet, despite ongoing efforts to expand and clarify MEJA,¹⁸⁸ the Act's regulatory effectiveness is doubtful. For instance, it is questionable if MEJA's reach extends beyond contractors working in support of DoD missions.¹⁸⁹ Moreover, the discussion about MEJA highlights a general problem affecting domestic PSC regulation: Enforcement agencies are ill-suited to operate in an active conflict zone¹⁹⁰ and plans to create dedicated FBI "Theatre Investigative Unit" have yet to produce tangible results.¹⁹¹ Invariably, the lack of effective enforcement units affects the evidentiary standard of investigations,¹⁹² which makes successful prosecutions an unlikely prospect.¹⁹³

¹⁸¹ Bailes/Holmqvist (2008), p. 14, Avant (2005), p. 150.

¹⁸² Lehnhardt (2007), p. 150.

¹⁸³ Schreier/Caparini (2005), p. 105, Holmqvist (2005), p. 51, Avant (2005), pp. 150-151.

¹⁸⁴ Caparini (2007), p. 170.

¹⁸⁵ *Ibid.*, p. 171.

¹⁸⁶ Sheehy *et al* (2009), p. 135, Caparini (2007), p. 173.

¹⁸⁷ Taljaard (2006), p. 169.

¹⁸⁸ Elsea *et al* (2008), p. 50-56, Schulmann (2010).

¹⁸⁹ MEJA may not even apply to DoS contractors (Eugene Fidell in Andrews (2010), Gibeaut (2010)).

¹⁹⁰ Cockayne *et al* (2009), p. 42, Cusumano (2010), p. 9.

¹⁹¹ Elsea *et al* (2008), p. 50-56, Govtrack (2010), Govtrack (2010 II).

¹⁹² Finer in The Century Foundation (2007).

¹⁹³ Percy (2006), p. 29.

Partly to address this enforcement problem,¹⁹⁴ efforts have been made to subject PSCs to military law by expanding the US *Uniform Code of Military Justice* (UCMJ).¹⁹⁵ This would integrate PSCs into the military chain of command and allow the JAG Corps to monitor and sanction PSCs, motivating Peter Singer to call the expansion of the UCMJ the ‘single biggest legal development’ for the PSI.¹⁹⁶ However, the applicability of the UCMJ to PSCs remains unclear: While some fear PSC employees could be penalized for violating the military’s grooming standard or watching pornography,¹⁹⁷ others contend that the UCMJ may only be applicable to PSCs under direct contract with the DoD¹⁹⁸ and that the constitutionality of applying military law to civilians without a declaration of war is questionable.¹⁹⁹

This brief review of selected domestic laws suggests that, rather than a web of complementary regulations with a shared regulatory aim, domestic regulation remains an eclectic mix of laws, most of which predate the emergence of contemporary PSCs and are ill-suited to regulate them.

Extraterritoriality

The literature’s concerns about domestic regulation primarily focus on the problem of extraterritoriality.²⁰⁰ Since territorial states are generally considered too weak to effectively monitor and sanction PSC behaviour,²⁰¹ home states and contracting states are believed to be ‘ultimately responsible’ for the regulation of PSCs.²⁰² Even assuming that home and contracting states accept their responsibility to regulate PSCs,²⁰³ their ability to do so remains constrained by legal and logistical challenges. On the legal side, the extraterritorial reach of domestic laws is generally limited to crimes committed by or against the prosecuting country’s citizens.²⁰⁴ On the logistical side, the challenges involving in gathering evidence and questioning witnesses to a sufficient evidentiary standard are considerable,

¹⁹⁴ Singer (2007 III).

¹⁹⁵ Isenberg (2009), p. 147. The UK government pursues a similar strategy through its *Sponsored Reserves*, *CONLOG* and *CONCAP* programs (Uttley (2005), p. 41ff.).

¹⁹⁶ Singer (2007 III).

¹⁹⁷ Isenberg (2009), p. 147, Mandel (2007). Peter Singer points out that the extension of the UCMJ would also apply to embedded journalists (Singer (2007 IV)).

¹⁹⁸ Bailes/Holmqvist (2008), p. 14, Singer (2007 III).

¹⁹⁹ Elsea *et al* (2008), p. 27, Dionne (2008).

²⁰⁰ Percy (2006), p. 37, Avant (2007), p. 185, Cusumano (2009), p. 9.

²⁰¹ Percy (2006), p. 37, Cockayne (2006), p. 12.

²⁰² Schreier/Caparini (2005), p. 117.

²⁰³ The costs involved in regulating PSCs may deter states from doing so (Percy (2006), p. 37, Caparini (2007), p. 171).

²⁰⁴ Cockayne *et al* (2009), p. 7.

while the resources most states have at their disposal to tackle them are limited.²⁰⁵ Even if home/contracting states were able to effectively regulate PSCs beyond their borders, their legal traditions, available resources, commitment to PSC regulation and thus regulatory approach would likely differ considerably. Finally, the effectiveness of any domestic regulation is limited by PSCs' ability to evade stringent regulation by moving to a more lenient jurisdiction.²⁰⁶

These concerns about extraterritoriality rely on two assumptions that this thesis has shown to be questionable. First, regulatory evasion assumes that relocating a PSC is relatively "cheap". Chapter Five, however, highlighted the importance of close customer relationships, which would likely suffer if a PSC engaged in regulatory evasion. Indeed, a company's ability to relocate is likely limited by its customers' preferences. Hence, states could marshal their considerable demand power to dissuade PSCs from regulatory evasion. Secondly, the literature rightly notes that regulatory compliance entails costs, but wrongly concludes that PSCs necessarily want to evade such costs. Voluntary compliance is an important signalling device to attract employees and customers, especially if PSCs hope to compete on quality rather than price. Therefore, regulatory evasion could hurt PSCs' competitiveness, the costs of which may well exceed compliance costs.

The role of compliance in competitiveness highlights a broader issue with the literature's view on regulation. While weak enforcement undoubtedly hurts regulatory effectiveness, regulation can exert influence on PSC behaviour even if there is little enforcement. For instance, a PSC committing an illegal action risks being prosecuted for it at a later stage. This increases the uncertainty faced by PSCs, which, in turn, complicates their strategic management and makes it harder to attract outside financing. Moreover, choosing to break a law sends an unmistakable message to clients, especially in markets like the PSI, where service quality and prices are difficult to compare and, hence, market participant exponentially rely on trust.²⁰⁷

²⁰⁵ The use of PSCs by smaller countries, e.g. Italy, is frequently overlooked in the debate (Burke (2009)).

²⁰⁶ Avant (2007), p. 185.

²⁰⁷ See Chapter 5 Section XXX.

Conclusion

Still, Caroline Holmqvist maintains that domestic regulation ‘is undoubtedly the most effective and most easily enforced’ type of regulation.²⁰⁸ Indeed, an increasing number of authors regards international and domestic regulation not as competing, but as complementary regulatory options, whose combination in a regulatory ‘matrix’ may be the best solution to controlling the PSI.²⁰⁹ Before further exploring this regulatory matrix, the next section discusses a third potential addition to the regulatory matrix: informal regulation.

Section Nine: Informal Regulation

Interest in informal regulation among PSC representatives, academics and policy-makers has noticeably increased in recent years. In part, this is attributable to the fickle interest of policy-makers in and the resulting persistent lack of progress on enacting formal PSC regulation.²¹⁰ Changes in the market for security – interviews particularly noted the trend away from PMCs²¹¹ – have also lessened the need for prohibitive regulation and thus drawn attention to the potential contribution informal regulation can make to the control of PSC behaviour.²¹²

Voluntary Agreements / Collective Self-Regulation

Compared to formal regulation, collective self-regulation, exemplified by the IPOA’s *Code of Conduct* and the BAPSC’s *Charter*,²¹³ offers significant advantages: like most forms of informal regulation, collective self-regulation can be created and reformed with relative ease.²¹⁴ Since it is created by PSCs for PSCs, it is also widely supported within the PSI.²¹⁵ Such support can take a variety of forms, including peer pressure,²¹⁶ intra-industry information-sharing²¹⁷ and access to expert knowledge from industry insiders.²¹⁸ Finally, self-regulation

²⁰⁸ Holmqvist (2005), p. 54. See also Percy (2006), p. 36-37.

²⁰⁹ Bearpark/Schulz (2007), p. 246.

²¹⁰ Bearpark and Brooks in Percy (2006), p. 59. See, for example, Rodham Clinton (2008), Obama (2007).

²¹¹ Willcocks (2008), Phillips (2010).

²¹² Percy (2006), 53-61, Dickinson (2007).

²¹³ IPOA (2009), BAPSC (no year II).

²¹⁴ Deutscher (2008), p. 34.

²¹⁵ Holmqvist (2005), p. 47.

²¹⁶ Percy (2006), p. 58.

²¹⁷ Phillips (2010).

²¹⁸ Bearpark/Schulz (2007), p. 247.

shifts the regulatory burden, reducing government's share of the political and financial costs associated with regulating PSCs.²¹⁹

Critics, however, highlight the conflict of interest inherent in collective self-regulation. Publicizing incidents of misconduct involves high reputational costs for the affected PSCs and the PSI as a whole.²²⁰ Self-regulating associations, like IPOA and the BAPSC, are industry-financed and their aim is to promote the PSI's interests, providing them with ample incentives for leniency. Thus, self-regulatory schemes either lack explicit enforcement mechanisms,²²¹ or their enforcement mechanisms are hampered by the vagueness of their underlying provisions,²²² a lack of independent and transparent monitoring²²³ and the absence of effective sanctions.²²⁴ Moreover, collective self-regulation is voluntary, which means that PSCs can leave a regulating industry association if they want to avoid investigations - with seemingly little consequences for their business.²²⁵

A similar critique targeting weak enforcement and their non-binding character is brought forward against voluntary agreements,²²⁶ such as the Voluntary Principles on Security and Human Rights (VP)²²⁷ and the Montreux Document.²²⁸ The VP's flaws are somewhat representative for a number of similar voluntary agreements: they exclude key stakeholders,²²⁹ and they lack specific compliance criteria and effective monitoring.²³⁰ As a result, the VP's regulatory impact on the PSI is limited.²³¹ Furthermore, instead of the top-down approach characteristic of formal regulation or the bottom-up approach of industry self-regulation, voluntary agreements bring together various stakeholders to develop regulation on an equal footing. Affording parties with vastly different regulatory aims equal

²¹⁹ *Ibid.*, Sheehy *et al* (2009), p. 112.

²²⁰ Isenberg (2009 III), p. 41, Amnesty International (2009).

²²¹ Cockayne *et al* (2009), p. 159.

²²² Holmqvist (2005), p. 47

²²³ Amnesty International (2009), Hoppe/Quirico (2009), p. 18.

²²⁴ Cockayne (2007), p. 207.

²²⁵ *Ibid.* See, for example, Blackwater's decision to leave IPOA after the Nisoor Square incident (Isenberg (2009), p. 81).

²²⁶ Jennings (2006), p. 56, Holmqvist (2005), p. 47-48.

²²⁷ Cockayne *et al* (2009), p. 144ff. The VPSHR are a set of non-binding principles, addressing human rights concerns emanating from the use of security contractors in the extractive industries.

²²⁸ Cockayne (2008), p. 427ff.

²²⁹ PSCs were neither involved in the negotiation process, nor are they listed among the participants (<http://www.voluntaryprinciples.org/participants>).

²³⁰ Holmqvist (2005), p. 48-49, Cockayne *et al* (2009), p. 155ff.

²³¹ Holmqvist (2005), p. 48.

say in the development of regulation can cause voluntary agreements to achieve little more than a minimal consensus.²³²

The Montreux Document ostensibly marks a new approach that reflects the growing dissatisfaction with voluntary agreements. PSC representatives were invited to consult, but excluded from the final stages of the negotiations.²³³ Moreover, the Montreux Document is intended less as a regulatory tool in its own right than as a template for internationally harmonized, binding formal regulation.²³⁴

The literature's objections to voluntary agreements and collective self-regulation hinge on the notion that violating them supposedly entails no legal consequences. In contrast, the previous section argued that regulation can have an impact even if it is not supported by effective enforcement: PSCs are not indifferent about their reputation and, more importantly, neither is their "bottom line". Moreover, PSCs rely on professional norms to deal with internal conflicts and uncertainty.²³⁵ Voluntary compliance and adherence to professional norms are important signals to customers and creditors, fostering their goodwill and trust.²³⁶ While there are limits to PSCs' willingness to accept regulatory scrutiny in exchange for greater legitimacy, up to that point voluntary agreements and collective self-regulation have considerable regulatory potential despite their lack of legal force.

Contracts and Market Pressure

A desire to hold the "demand-side", especially governments, accountable for their use of PSCs has spurred an interest in regulation through contracts.²³⁷ Indeed, integrating public law values into private law vehicles, i.e. contracts,²³⁸ offers considerable regulatory advantages: contract-based regulation is easily implemented, as it does not require any new laws or regulatory authorities,²³⁹ it allows for significantly greater flexibility in responding to

²³² Cockayne *et al* (2008), p. xvi. See also Kinsey (2007), p. 4.

²³³ Cockayne (2008), p. 422.

²³⁴ *Ibid.*, p. 427.

²³⁵ See Chapter 3 Part II.

²³⁶ Bearpark/Schulz (2006), p. 247.

²³⁷ Bailes/Holmqvist (2007), p. 17, Cowen (2007), p. 1. While a lively debate has developed about "state responsibility" (Lehnhardt (2007), Hoppe (2008), Wagner (2010)), its private sector equivalent is largely ignored.

²³⁸ Dickinson (2006), p. 386ff.

²³⁹ Percy (2006), p. 56.

different regulatory needs²⁴⁰ and it is easily, yet effectively enforced, due to its direct link to PSCs' 'purse-strings'.²⁴¹

Yet, so far these advantages remain mostly theoretical, as especially the US government's contract management has been widely criticized.²⁴² There has been an overreliance on often poorly designed no-bid and cost-plus contracts,²⁴³ often by government institutions other than the Pentagon,²⁴⁴ and contracts were awarded to insufficiently vetted companies.²⁴⁵ A lack of institutional capacity, especially the low number of contracting officers²⁴⁶ and 'their lack of knowledge of the security market', further aggravated the US government's poor contract management.²⁴⁷

While the proponents of regulation through contract respond to this criticism with calls for increased resources and contractual reform,²⁴⁸ unwillingness rather than inability may be to blame for poor contract management. The costs of "punishing" PSCs may indeed motivate a lenient approach to misconduct. Significant sanctions may cause the contractual relationship and thus the provision of security services to cease, which would expose the client to significant physical risks if a replacement cannot be found immediately.²⁴⁹ In this sense, the effectiveness of regulation through contracts is determined by the underlying market: Unless customers have a realistic option to switch PSCs upon discovering misconduct, regulation through contract has limited deterrent value. Many authors moreover contend that the lack of competition in the PSI makes the replacement of a contractor prohibitively expensive.²⁵⁰ To make matters worse, there seems to be a lack of contingency planning when it comes to replacing contractors.²⁵¹

In conclusion, contracts are seen as one source of regulatory influence on the PSI, which has significant potential - potential that has yet to be fully realized. In addition to contractual

²⁴⁰ Dickinson (2007), p. 230-231.

²⁴¹ Willcocks (2008).

²⁴² GAO (2005), p. 29ff, GAO (2006), p. 7-8, Isenberg (2009), p. 87-91. Unfortunately, little data are available on the effectiveness of private sector contract management (Percy (2006), p. 57).

²⁴³ Donald (2006 II), p. 15, Surowiecki (2004).

²⁴⁴ Schooner (2005), p. 564.

²⁴⁵ Isenberg (2009), p. 87, Schumacher (2006), p. 46.

²⁴⁶ Cullen/Weinberger (2007), p. 34-36, Harris (2004). Also, few contracting officers are deployed "in theatre", which limits their effectiveness (Schooner (2005), p. 557).

²⁴⁷ GAO (2005), p.14.

²⁴⁸ Dickerson (2007), p. 220ff, Cullen/Weinberger (2007), p. 9ff.

²⁴⁹ Singer (2003), p. 158-159, Leander (2005), p. 810.

²⁵⁰ Holmqvist (2005), p. 30, Isenberg (2009 III), p. 23, Surowiecki (2004), Jennings (2006), p. 21.

²⁵¹ GAO (2003), p. 16, Petersohn (2008), p. 36.

reform, clients have to accept their regulatory responsibilities for regulation through contract to be successful.²⁵² Among private sector clients, whose contract management capabilities may be limited, there may be little enthusiasm for taking on such responsibilities. However, the most significant objection to regulation through contracts identified by the literature is that its sanctioning power is restricted to financial penalties.²⁵³ This assessment of regulation through contract, however, fails to appreciate both its strength and the *de facto* weaknesses of regulatory alternatives. Governments can encourage PSC customers to accept their regulatory responsibility, for example, by otherwise excluding them from competition for public sector reconstruction contracts. While this may not extend regulation through contract to cover the PSI in its entirety, it would affect a large number of the PSI's private sector clients, due to the importance of reconstruction funds in the recent PSC boom. Once such standard is widely adopted, reputational pressure may extend it to the remaining, unregulated customers. Moreover, while formal regulation theoretically offers stronger sanctions, effective international and domestic regulation has yet to be created. Meanwhile, in interviews, PSC representatives identified contractual provisions about vetting and SOPs as having the strongest effect on the quotidian activities of PSCs.²⁵⁴

Civil Suits

The PSC literature is even more sceptical about the regulatory effectiveness of civil suits.²⁵⁵ In general, PSCs cannot be prosecuted in territorial states, because a functioning legal system is often unavailable or highly politicized in post-conflict environments and PSCs are granted immunity from local jurisdiction.²⁵⁶ Suing PSCs in home or contracting states is only possible in exceptional cases, e.g. through the US Alien Tort Claims Act (ATCA) for significant IHL violations,²⁵⁷ and it entails 'daunting costs and complexities'.²⁵⁸ Even where plaintiffs can rely on home/contracting state jurisdiction, PSCs can try to shield themselves from liability

²⁵² Percy (2006), p. 57-58, Jennings (2006), p. 51.

²⁵³ Percy (2006), p. 58.

²⁵⁴ Phillips (2010), Legge-Bourke (2010), Norman (2010).

²⁵⁵ Cockayne *et al* (2009), p. 42, Carter (2004 II), Lam (2009), p. 1494.

²⁵⁶ Lam (2009), p. 1483.

²⁵⁷ Perrin (2006), p. 625-626.

²⁵⁸ Sheehy *et al* (2009), p. 51.

by using the “government contractor defence”, which stipulates that companies cannot be held liable if they provide services ‘in line with government specifications’.²⁵⁹

Interestingly, the literature seems to associate civil suits solely as a means for addressing third party grievances. This, however, ignores the possibility of employees and clients suing PSCs. Moreover, contrary to the PSC literature’s assertions, interviews indicate that civil suits do constitute a major concern for PSCs.²⁶⁰ In addition to their tangible costs, i.e. legal fees and damages,²⁶¹ interviews suggest that PSCs worry primarily about the reputational costs associated with a civil suit.²⁶² Indeed, some PSC representatives predicted that PSCs’ desire to minimize the risk of litigation rather than the fear of regulation will be the source of standard-setting in the PSI.²⁶³

Private sector customers seem to be particularly attentive to the reputation of their partners in the PSI. While interviews with PSC customers attributed this to concerns about reputational costs,²⁶⁴ one PSC representative claimed that victims of misconduct may not sue PSCs but their clients, as the latter tend to have “deeper pockets”.²⁶⁵ Either way, civil suits create a strong incentive for clients to hold PSCs accountable and this yet has to be fully recognised by the literature. Likewise, the criticism that civil suits can only address grievances ‘post facto’²⁶⁶ ignores the preventive measures PSCs pursue to minimize the risk of litigation,²⁶⁷ such as the adoption of ISO norms.²⁶⁸ Finally, another largely overlooked benefit of ATCA-based civil suits is their ability to offer the individual victim, who would otherwise have no recourse to the law, a chance to get her/his day in court.²⁶⁹

The literature, therefore, seems to underestimate the regulatory potential of civil suits. Said potential, however, admittedly comes at a cost. Given the prospect of highly punitive damages being awarded against them, civil suits could induce over-deterrence in PSCs and

²⁵⁹ Isenberg (2009), p. 129, Carter (2004).

²⁶⁰ Phillips (2010), Claridge (2010), Worchester (2005).

²⁶¹ Lam (2009), p. 1495.

²⁶² Norman (2010).

²⁶³ Isaac (2010).

²⁶⁴ Sorge (2009), Schenz (2009), Ashwell (2008).

²⁶⁵ Phillips (2010).

²⁶⁶ Jennings (2006), p. 51.

²⁶⁷ Lam (2009), p. 1498.

²⁶⁸ Beese (2005), Phillips (2010).

²⁶⁹ Lam (2009), p. 1496-1497.

their customers.²⁷⁰ Legal experts consider the effect of over-deterrence ‘unlikely to be significant’, arguing that PSCs, ‘as private companies [...] have plenty of incentive to find their way to the most efficient outcome’.²⁷¹ However, the most efficient outcome for PSCs may well be to hide misconduct rather than to prevent it. Even if PSCs were to increase their preventive efforts to avoid civil suits, these efforts would likely be inefficient and ineffective. Effective and efficient prevention is conditional on an established precedent or guidance from lawmakers on what constitutes lawful behaviour. To date, such guidance is largely absent. Finally, rather than focusing on prevention, PSCs may instead minimise the costs of civil suits by insuring against them, which would make their products more expensive. Alternatively, PSCs could reduce their investments in an effort to cap their losses in case of a civil suit, which would do little to prevent misconduct and would instead reduce the quality of their product.

Conclusion

The stark contrast between the literature’s and the industry’s views on the regulatory impact of civil suits offers an interesting insight into how the regulatory impact is assessed. The literature focuses far more on the limited ability of civil suits to provide restitution in individual cases of misconduct rather than on its ability to affect future PSC behaviour. With respect to the latter, civil suits have considerable regulatory potential, provided that they receive clear guidance as to what constitutes lawful behaviour. An important role in providing said guidance could fall to voluntary agreements, collective self-regulation and regulation through contract. Even if a specific PSC is not party to either, such agreements could define a standard of behaviour for the PSI against which individual PSCs could be judged in civil suits.

²⁷⁰ Lam (2009), p. 1494-1495.

²⁷¹ *Ibid.*

Conclusion Part II: Regulatory “Fig Leaves” and the “Illusion of Attainability”

While the potential of informal regulation is increasingly being recognized, scepticism about its regulatory effectiveness prevails in the current literature. Critics are particularly concerned about its sanctioning power being limited to financial penalties, which are considered inappropriate, given the ‘gravity of some allegations about PMSC conduct’.²⁷² It is feared that relying on informal regulation could create a regulatory ‘fig leaf’ – regulation whose existence legitimizes, but fails to effectively control PSCs, while lessening the political pressure to impose effective formal regulation.²⁷³ Hence, even its proponents seem to agree that informal regulation can at best supplement, but not substitute formal regulation.²⁷⁴ This rejection of informal regulation is arguably partly based on an “illusion of attainability” of international and domestic regulation. However, the political obstacles and costs involved in creating and maintaining effective international and/or domestic regulation appear to be prohibitive. At the moment, the choice is thus not between informal and formal regulation, but between informal and no regulation.

Whether this is likely to change in the future is hard to project. Barring a major incident of misconduct, progress seems unlikely, given the costs and complexities involved in regulating the PSI.²⁷⁵ Moreover, a future push for regulation may produce an outcome that differs considerably from the literature’s suggestions. For instance, the UK government does not seem to share the literature’s concerns about the likelihood of PSC misconduct and the resulting need for sanctions based on criminal law.²⁷⁶ Instead, in its newest Public Consultation on PSC regulation, the UK government abandoned earlier plans for a licensing regime in favour of regulation through contract.²⁷⁷ This suggests that, irrespective of the literature’s calls for more formal regulation, informal regulation will play a significant role in the PSI.²⁷⁸ Such across-the-board use of informal regulation would require significantly more research, particularly on its, to date, largely unknown costs and risks. Moreover, such research would require a more sophisticated understanding of the economic aspects of PSC

²⁷² Cockayne *et al* (2009), p. 8. See also Kinsey (2005), p. 279, Isenberg (2004), p. 70, Sheehy *et al* (2009), p. 61.

²⁷³ Cockayne (2008), p. 427-428, Holmqvist (2005), p. 50, Bearpark/Schulz (2007), p. 249.

²⁷⁴ Percy (2006), p. 65, Bearpark/Schulz (2007), p. 247, 249.

²⁷⁵ Donald (2006 II), p. 30, Willcocks (2008), Walker/Whyte (2005), p. 687.

²⁷⁶ Reed (2010), FCO (2010), § 2. FCO (2009 II).

²⁷⁷ Reed (2010).

²⁷⁸ FCO (2009 IV), § 16.

behaviour than the current literature can arguably offer, given the reliance of informal regulation on market pressure to achieve its regulatory aims.

Section Ten: Conclusion: The Regulatory Matrix

The previous nine sections of this Chapter provided a critical appraisal of the literature's approach on PSC regulation. This chapter first assessed the historical influences on the debate about PSC regulation, before reviewing the need and reasons for regulation. Finally, it discussed the literature's position on the different types of PSC regulation and their prospects for addressing the aforementioned need for regulation. The various sections highlighted problems with the literature's view on regulation. To reiterate but a few:

- its notion of continuity between PSCs and traditional private security providers,
- its focus on the need, rather than the costs and limits of regulation,
- its disregard for the benefits of PSC use and for the industry's concerns about regulation,
- its limited engagement with regulatory alternatives,
- its optimistic assessment of international and domestic law and its pessimistic evaluation of informal regulation,
- its focus on what is desirable, rather than on what is politically and economically feasible.

This chapter demonstrated that the literature's view of PSC regulation, i.e. its reliance on the prevalent behavioural model, which is encapsulated in the zero-sum approach to PSC regulation, is largely responsible for these problems.

This concluding section focuses on the literature's preferred regulatory solution. Rather than advocating the use of a single type of regulation, the literature proposes combining the various types of regulation to create a so-called regulatory matrix.²⁷⁹ Partly, this approach is driven by pragmatism. The *status quo* with its mix of international, domestic and informal

²⁷⁹ Bearpark/Schulz (2007), p. 246. See also Percy (2006), p. 66-67, Avant (2007), p. 193.

regulations arguably already constitutes a regulatory matrix of sorts,²⁸⁰ and adding to it is easier than to start “from scratch”.²⁸¹ However, the matrix aspires to being more than an eclectic collection of laws: Authors hope that combining the different types of regulation to form a ‘complex of overlapping [regulatory] systems’ allows the different types of regulation to compensate for their respective weaknesses.²⁸² In sum, the resulting regulatory amalgam aspires to be more than the sum of its part.

The Risk of Under-Regulation

Despite the literature’s growing interest in the regulatory matrix, its risks and limitations have yet to be explored. Its fatal flaw may be the issue of international coordination. While its importance is widely acknowledged,²⁸³ authors have yet to explain how to achieve the necessary international agreement on PSC regulation. Using the matrix approach without international coordination would limit its regulatory effectiveness and could have devastating consequences for the PSI. One possible consequence could be that, if the regulatory matrix fails to produce a global standard, PSCs could engage in regulatory arbitration and thus ‘evade direction or carve out spheres of discretion’.²⁸⁴ Moreover, as the PSI continues to prosper, individual states may compete for market shares by opting for increasing leniency to assure their domestic industry’s competitiveness. As a result, the process of developing PSC regulation could become a race to the bottom, producing a regulatory matrix that would be little more than a fig leaf, removing the stigma of being unregulated from PSCs, while exerting little effective control over the industry.

The Risk of Over-Regulation

While a race to the bottom is theoretically feasible, it appears to be an ultimately unlikely outcome, as public pressure for regulation remains too strong to for governments to bear the political costs of regulatory inaction. A more likely outcome would be that governments, possibly in response to a future scandal, would bow to public pressure and add regulations without international coordination.²⁸⁵ The regulatory effectiveness of such a resulting

²⁸⁰ Percy (2006), p. 66.

²⁸¹ Bearpark/Schulz (2007), 243-244.

²⁸² Percy (2006), p. 67.

²⁸³ Bearpark/Schulz (2007), p. 246.

²⁸⁴ Avant (2007), p. 186.

²⁸⁵ Regional bodies, such as the EU, may develop multilateral regulation (Bailes/Holmqvist (2007), p. 21ff, Krahmann (2005 III), p. 22.

uncoordinated matrix depends on the specific regulations added to it, but it would ultimately be no more than the sum of its parts. However, its effects on the PSI could potentially be devastating. Such uncoordinated combination of regulation from a multitude of sources would force PSCs to develop different compliance strategies for each jurisdiction. Moreover, in deciding on what level of regulatory burden is acceptable, policy-makers would likely focus on the regulatory impact their particular proposals would impose, rather than on the overall regulatory burden PSC would have to bear. Indeed, uncertainty about the effectiveness of PSC regulation elsewhere would likely cause policy-makers to over-regulate to avoid politically costly accusations of complacency. As a result, the regulatory burden imposed on PSCs would increase substantially.

The level of attention that the literature devotes to analysing the costs of regulation suggests that it has yet to be recognized as a serious problem. Indeed, some authors seem to suggest that almost any level of regulatory costs is justified because of the profit margins of PSCs. Sheehy *et al* even claim that PSC regulation does not have to be 'objectively fair'.²⁸⁶ This underestimates the market impact of a substantial increase in the regulatory burden. Essentially, the increased regulatory costs functions as a barrier to entry, possibly forcing smaller PSCs to exit the market and preventing new entrants from entering.²⁸⁷ As a result, competitive pressure in the PSI would decrease and the already high pace of supply-side market concentration would further accelerate.²⁸⁸ A reduced supply of PSC services would likely increase prices, as PSCs seek to pass on regulatory costs to their customers. As a result, clients with insufficiently deep pockets, among them many NGOs, could no longer be able to afford PSC services. As prices go up in the PSI, substitute products also increase in attractiveness, which may lead clients to switch from PSCs to relatively more problematic local security providers. Worse, clients may accept greater risk exposure, reversing a recent trend of greater awareness of the impact of political risks on the corporate world.²⁸⁹ The latter point is particularly salient, as companies are increasingly held liable for the well-being of their employees, e.g. through the UK Corporate Manslaughter Act and the US Sabanes/Oxley Act.²⁹⁰ Alternatively, if the costs of security increase significantly, companies

²⁸⁶ Sheehy *et al* (2009), p. 141. See also Lam (2009), p. 1494-1495

²⁸⁷ Cockayne *et al* (2009), p. 256.

²⁸⁸ Donald (2006 II).

²⁸⁹ Richard Dearlove in Lloyd (2007 II), p. 2. See Chapter 4 Section 5.

²⁹⁰ Donald (2006 II), p. 27.

may forego otherwise lucrative opportunities in high-risk environments, thus generate welfare losses.²⁹¹ Moreover, this would also slow the pace of reconstruction in high-risk post-conflict environments. The potential harm an increased regulatory burden could therefore cause is considerable and neither limited to financial costs nor to costs exclusively accruing to the PSI but to wider society.

Moreover, it is far from certain that the literature's regulatory proposals would achieve their primary objective of improving control over the behaviour of PSCs. Adding 'more strands' to the regulatory web would defy the industry's regulatory aims, specifically its wish for greater clarity about the legal status of its operations.²⁹² In addition to the risk of overwhelming the limited means PSCs have at their disposal for addressing regulatory compliance, implementing such regulation could further decrease the industry's enthusiasm for regulation as a whole. Moreover, the PSC literature's preference for regulation through coercion may decrease the effectiveness and potential of cooperation-based informal regulation, such as the BAPSC's and IPOA's collective self-regulation schemes. It is unclear, given the obstacles outlined in this chapter, that the literature's proposed regulatory matrix could over-compensate this loss. To stay within the web metaphor: Adding to the web may tear new holes, rather than fill existing ones.

This discussion does not seek to argue that there is no need for regulation nor that all forms of regulatory intervention would only make matters worse. Instead, this chapter's discussion suggests that the PSC literature's regulatory approach and its reliance on the prevalent behavioural model risks creating ineffective and inefficient regulation. This chapter therefore emphatically disputes the initial proposal that policy-makers may exclusively rely on the prevalent behavioural model when creating PSC regulation. Without a thorough understanding of PSC behaviour, policy-makers are indeed likely to do more harm than good in their otherwise laudable efforts to create PSC regulation. Chapter Seven will outline a possible alternative regulatory approach based on this thesis' behavioural model and will discuss why such regulatory proposal would likely be more successful in effectively controlling PSC behaviour.

²⁹¹ Stoppelkamp (2009).

²⁹² Percy (2006), p. 66.

Conclusion

‘For every complex problem, there is a solution that is simple, neat, and wrong’

Henry Louis Mencken

As the military missions in Iraq and Afghanistan come to a close, the pressure to regulate PSCs has seemingly abated for the moment. However, given the ongoing reconstruction efforts in both countries, demand for private security services is likely to remain high and could even increase following the military withdrawal.¹ Yet, even if demand in Iraq and Afghanistan should decrease, renewed attention to maritime security and the increase in insecurity in the wake of the *Arab Spring* suggest that public and private sector use of PSC services will continue in the foreseeable future. More importantly, the *Nisour Square Incident* and the *ad hoc* manner in which it brought about profound regulatory change has shown that pressure to regulate PSCs can increase with little prior warning. Complacency, thus, is not advisable and, indeed, the *Montreux Document* and the negotiations surrounding the *International Code of Conduct (ICoC)* show that the process of developing PSC regulation is ongoing.²

As LeGrand notes, any market intervention, such as the creation of PSC regulation, relies on a behavioural model.³ Policy-makers need to know how and why PSCs behave the way they do to create effective regulation that encourages desired and discourages undesired behaviour. Against this background, a mismatch emerged between, on the one hand, the way in which the literature characterized PSC behaviour and, on the other hand, the available empirical evidence of PSC behaviour in Iraq and Afghanistan - the empirical puzzle at the heart of this study. It is with respect to resolving this puzzle and, thus, the creation of effective regulation that this thesis aimed to make an original contribution to the PSC literature.

¹ Hughes (2012).

² The ICoC is a multi-stakeholder initiative under the auspices of the Swiss government that seeks to develop and implement a voluntary set of standards of behaviour for the PSI (see also <http://www.icoc-psp.org/>).

³ LeGrand (1997), p. 150.

The Empirical Puzzle

If PSCs are, indeed, as solely motivated by their self-interested desire for financial profit and if their client relations are as abundant with opportunities to shirk as the PSC literature suggests, one should expect there to be plenty of evidence for PSCs' misconduct. After all, PSCs have been widely used in Iraq and Afghanistan since 2003 and without effective regulation in place to deter them from engaging in such behaviour. However, while there is some evidence of PSC misconduct, there is insufficient proof for it constituting PSCs' default behavioural option. Instead, UK PSCs in particular seem to have largely executed their duties in a loyal and reliable manner and there is even evidence of altruistic behaviour.

To solve this puzzle, this thesis applied concepts from economics, sociology and economic sociology to one of three aggregates in which economic activity takes place in the UK PSI:

Chapter Three focused on decision-making processes within individual UK PSCs. It argued that PSCs are not motivated by a coherent interest in corporate profit, but that the interests of PSC representatives and employees differ considerably. It further stressed the important role military professionalism plays in the UK PSI and, specifically, in generating the consensus necessary to overcome conflicts of interests within UK PSCs.

Chapter Four concentrated on the market for PSC services and on how competitive pressure influences UK PSC behaviour. Using Porter's FFF, it showed that competition in this market is strong enough to discourage companies from engaging in problematic behaviour without being so strong that PSCs would be forced to engage in problematic behaviour to assure their short-term corporate survival.

Chapter Five discussed the relationship between UK PSCs and their public and private sector clients. It showed that UK PSI client relations offer clients plenty of opportunity to hold UK PSCs accountable and, if necessary, to effectively sanction their behaviour. More importantly, it showed that the high level of uncertainty UK PSCs are exposed to provides them with strong incentives to cooperate with their contractual partners, rather than to shirk.

Building onto a detailed critique of the prevalent conceptualization of PSC behaviour, this thesis proposed an alternative model of PSC behaviour, which better accommodates the available empirical evidence. This innovative conceptualization of PSC behaviour constitutes

one of the original contributions this study has made to the PSC literature. This conclusion highlights further ways in which the thesis contributes to the PSC literature, contemplates its limitations and problems, points out policy recommendations and suggests avenues for further research.

Outline

Part one, section one, highlights the broader significance and implications of the thesis' conclusions. **Part two**, section two to four, critically reviews the thesis. Section two contemplates to what extent this thesis' narrow focus limits the applicability of its conclusions to the global PSI. Section three discusses the UK PSI's development since 2009 and its implications for this thesis. Section four critically reviews this thesis' methodology, its choice of data and supporting literature. **Part three**, section five, analyses the thesis' implications for the regulatory debate. **Part four**, section six, concludes this thesis by highlighting its original contribution as well as avenues for further research.

Part I: Significance and Implications

As noted, by proposing an alternative behavioural model, this thesis made an important original contribution to the debate about PSCs. This section highlights differences between the prevalent and proposed behavioural models, discusses its broader implications and notes further ways in which the thesis made original contributions to the PSC literature.

Section One: An Alternative Conceptualization of PSC Behaviour

The literature views PSCs as coherent actors that are exclusively motivated by financial profit. Their behaviour is thus not only reduced to their economic actions, but said economic actions are atomised from their broader social context, which, in turn, is accorded little significance in PSC decision-making. Moreover, the literature's view of PSCs' economic actions is highly simplistic, i.e. it pays little attention to the long-term consequences of business decisions or to how contractual partners may respond to or even anticipate PSC behaviour.

In contrast, the alternative model proposed by this thesis views PSCs as a "coalition of participants" with different, often conflicting interests that are by no means solely financial in nature. It stresses the extent to which PSCs are "embedded" in a social context that exerts

considerable influence on PSC decision-making. The proposed model further views PSCs as parties to strategic interactions, i.e. their actions are partly determined by the anticipated response said actions are likely to elicit from current and prospective clients, competitors and policy-makers. Moreover, rather than the “Hobbesian” view of PSI client relations taken by the PSC literature, the proposed model stresses the extent to which PSCs are eager to cooperate with their clients. Such cooperation is partly inspired by their social context, i.e. the notion that it is “the right thing to do”. Yet, it also reflects their self-interest, as it allows PSCs to reduce their uncertainty exposure and, thus, assures their corporate survival.⁴ Crucially, the proposed model disputes neither the presence of problematic behaviour nor its potentially significant consequences. Yet, such behaviour often occurs despite, not because of PSCs’ best efforts. Misconduct may also have an involuntary quality, e.g. a PSC may feel forced to shirk to assure its short-term corporate survival. Specifically, the thesis proposed that the extent to which PSCs cooperate with their clients is delineated by a bell-curve. At the extremes, where there is no competition or absolute competition, the social context matter little. On the fringes, where competition is either very strong or very weak, its effect is low. However, in the middle, where the vast majority of economic action in the PSI takes place, market and social pressures combine in PSC decision-making, causing PSCs to conform with conventions and cooperate with their contractual partner

Implications

The proposed alternative behavioural model has several important implications for the debate about PSC regulation. For instance, while Chapter Six already demonstrated how existing regulatory proposals are influenced by the prevalent behavioural model, Part III discusses how the proposed and the prevalent behavioural model differ from one another in their respective advice to policy-makers. Part III also draws attention to the potentially negative, yet often overlooked effect strict formal regulation has on private sector clients. Crucially, Part III will argue that strict regulation, supported by intrusive monitoring and severe sanctions may make PSC misconduct more rather than less likely. In contrast, the often underestimated potential benefits of informal regulation will be highlighted. Thus, this thesis’ second claim to originality lies in the novel way of looking at PSC regulation.

⁴ See Chapter 3 Section 10.

Additionally, the thesis has significant implications for the PSC literature itself and for its further development. While professionalism, competition and the P/A problem have played an important part in the debate about PSCs, the applicable literatures in sociology and economics have so far received little attention in the PSC literature. In contrast, this thesis has shown that a more thorough engagement with the disciplines of economics and sociology can provide important insights into PSC behaviour. Moreover, the combination of the two disciplines – through the application of economic sociology – constitutes a third original contribution to the analysis of PSCs.

A fourth claim to originality is based on the thesis' use of data. Not only has this thesis made extensive use of interview data, it has expanded said interviews from PSC representatives to include PSC employees and PSC clients – two groups that had previously received little attention in the PSC literature. The inclusion of private sector PSC clients, in particular, offered important insights into the market for PSC services and PSI client relations and provided an important means to triangulate interview data from PSC representatives. More importantly, the thesis complemented these interview data with the use of corporate reports, which also have so far been neglected by the PSC literature.

Part II: Potential Criticism

Before discussing its implications for policy-makers, clients and the PSC literature any further, however, it seems prudent to critically review this thesis, its results as well as the methods by which it reached them. The following sections focus on three aspects in particular: (1) on the thesis' narrow focus on the UK PSI, (2) on changes in the market for PSC services since 2008 and their consequences for this thesis' results and (3) on the thesis' methodology, particularly on its use of data and supporting literature.

Section Two: The Narrow Focus on the UK PSI

Regardless of whether they agree with its conclusions, critics are likely to admonish the narrow scope of this thesis. As a result, the alternative behavioural model can only explain and predict the behaviour of a narrow range of actors, namely UK PSCs that provide armed personal, perimeter and convoy security in Iraq and Afghanistan between 2003 and 2008. This approach stands in stark contrast to the PSC literature, which not only relies on a global focus, but also defines PSCs to cover a much broader array of companies, including not just PMCs like *EO* and *Sandline*, but also logistics companies like *KBR*.⁵

Chapters one and two already anticipated this criticism and pointed out a host of reasons why the thesis' narrow focus is justified. In short, they argued that the UK PSI is sufficiently important in and of itself to merit closer attention and noted that UK PSCs are considerably different from their US counterparts, from example, when it comes to their clientele, the composition of their workforce and their size and access to credit.⁶ If they restrict the applicability of this thesis' conclusions, these differences and their likely behavioural implications raise the question how the PSC literature can produce any meaningful explanations and predictions with respect to PSC behaviour using their broad approach. Indeed, closer scrutiny of the literature's statements about PSC behaviour suggested that they are often based in little more than assertions about the behavioural impact of the

⁵ See, for example, Chapter Two's discussion of Singer's *Tip of the Spear Typology*. Hence, some authors use the term PSMC (see for example, Pattison (2010), p. 425) or PMC (see, for example, Petersohn (2008), p. 2) rather than PSC.

⁶ Thompson (2011). Dyncorp is a pertinent example for this.

organizational structure of PSCs, notably their private, for-profit status.⁷ Insofar as the narrow focus on the UK PSI is therefore a limitation, it is arguably unavoidable.

Applicability of the Behavioural Model beyond the UK PSI

Moreover, while the alternative behavioural model is derived from a study of the UK PSI, some aspects of the model are likely applicable beyond its narrow scope. Competitive pressure (CH4), for instance, should be an important factor in the decision-making of PSCs outside of the UK PSI, once allowances for regional variations in their specific competitive environment are made. For example, while US and UK PSCs often compete with one another in a global market-place, US PSCs are far more focused on public sector clients and, more importantly, their business activities take place in a different legal environment. Likewise, client relations (CH5) are likely an influence of similar importance for UK and non-UK PSCs alike. However, the nature of those clients and how they choose to manage their interaction is subject to regional variation and may produce a different dynamic in non-UK PSC decision-making processes. Finally, the notion that PSCs are “coalitions of participants” with conflicting interest (CH3) should apply to non-UK PSCs as well. Yet again, the specific interests of “participants” will likely vary: While residual military professionalism is likely to play a role in US PSCs, the different nature of US military professionalism may produce different behavioural outcomes. Thus, while the specific dynamics discussed in this thesis may be limited to the UK PSI, its broader conceptual claims are likely also applicable to non-UK PSCs: Motives other than profit influence and, at times, determine PSC behaviour and that PSCs’ individual decision-making processes, their competitive market environment and their client relations are important conduits through which these non-profit motives influence PSC behaviour.

Section Three: Changes in the UK PSI since 2008

As the previous section noted, the thesis supported its choice of focus partly by highlighting the inherent importance of the UK PSI. Changes in the market for PSC services in recent years, especially since 2008, seemingly undermine this exceptional status of the UK PSI and, thus, could limit the applicability of the thesis’ result beyond its narrow temporal scope. This

⁷ See Chapter 2 Section 2.

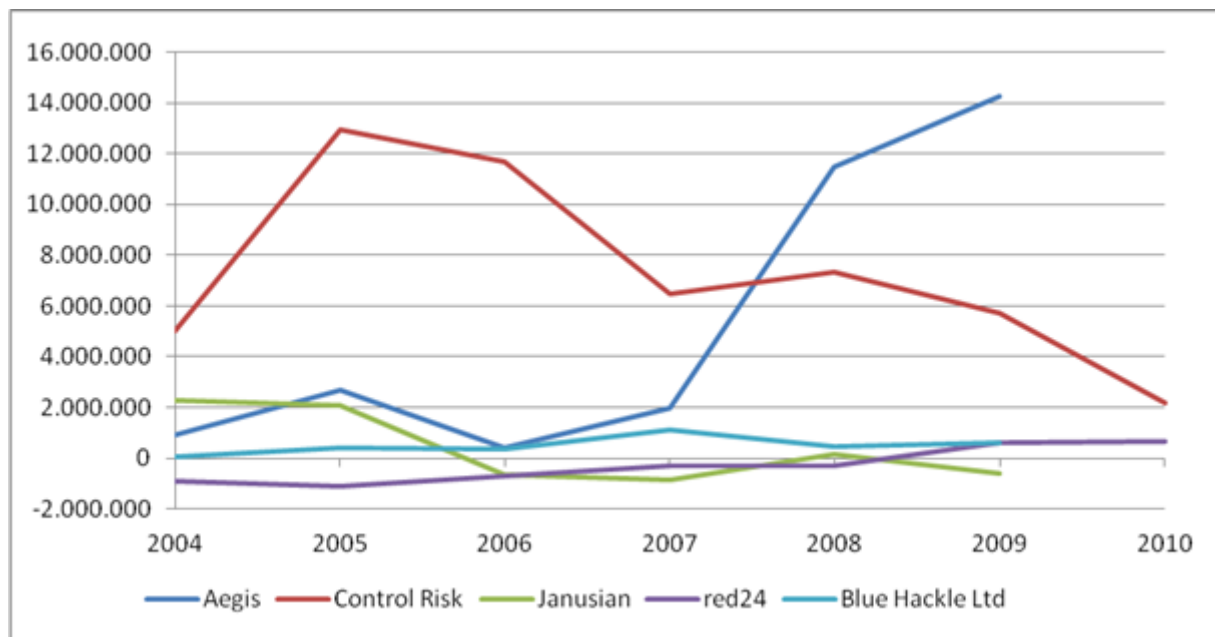
section will argue that both centripetal forces, which homogenize the trade in PSC services, and centrifugal forces, which emphasise the exceptional status of the UK PSI, are simultaneously at play.

Centripetal Forces

One important development that seemingly undermined the exceptional status of the UK PSI was the significant increase in public sector demand for PSC services that is commonly associated with the “bubble”. The “bubble” allowed new entrants to enter the UK PSI, notably *Aegis*, which had previously been characterized by close personal relationships. Moreover, it caused public sector demand to become a significant source of revenue for UK PSCs, which had previously focused primarily on private sector clients. To staff their large public sector contracts, UK PSCs used off-shore subsidiaries to avoid UK taxes and labour regulation, which caused some companies to eventually move their operation overseas altogether.⁸ Another development that has decreased the exceptional status of the UK PSI is the consolidation the industry has gone through since 2005. As a result, several UK PSCs have been bought by larger competitors. While *Aegis* purchase of *Rubicon* was less problematic in this respect, as it occurred within the UK PSC, but about *Triple Canopy*’s acquisition of *EI* and *G4S*’s successful bid for *Armorgroup* the same cannot be said. Finally, the UK PSI has suffered significantly from the global financial crisis, which diminished UK PSCs’ position in the market for PSC services. While companies with a strong private sector focus, such as *CRG*, *red24* and *Janusian*, have seen their profits decline since 2007, *Aegis*, which focuses primarily on public sector contracts, has seen its profits increase significantly. *Prima facie*, these centripetal forces seem to undermine the UK PSI’s exceptional status within the market for PSC services.

⁸ See Chapter 2 Section 7.

Figure 7-0-1 Operating Profits/Losses for Select UK PSCs from 2004-2010 in GBP



Centrifugal Forces

Closer scrutiny of the developments in the UK PSI both during the period covered by this thesis and since then suggest a more ambivalent picture. For instance, while there are still new entrants to the UK PSI, their number is believed to have declined and they are largely limited to small companies providing maritime security.⁹ While the financial crisis has caused a decline in UK PSC profits, it also highlighted that, with few exceptions, the UK PSI has retained its focus on private sector demand. There is some indication that said demand may stabilize or even increase in the coming years. For instance, a 2007 study by *Lloyds of London* found that three out of five business executives predict an increase of business risk due to violence and that 'nearly twice as many companies buy terrorism coverage today [in 2006] than they did in 2001'.¹⁰ Government actions have further made an increase in private sector demand more likely: Regulation, such as the UK *Corporate Manslaughter Act* and the US *Sabanes-Oxley Act*, increasingly holds management accountable under criminal law for the misconduct of their companies,¹¹ thus creating a strong incentive for companies to delegate some liability to a PSC.¹² Finally, while UK PSCs' attempts to diversify have yielded very mixed results, they indicate a clear willingness to move away from providing PSC

⁹ Toyne-Sewell (2011), Beese (2011), Phillips (2010).

¹⁰ Lloyds (2007), p. 7 and 17.

¹¹ Bill Waite in Spear's Wealth Management Survey (2008 III), Hugh Martin in Spear's Wealth Management Survey (2008 V).

¹² Toyne-Sewell (2011), Ashwell (2008).

services to public sector clients into areas like travel and data security, screening services and integrated security systems.¹³ Indeed, in interviews, UK PSC representatives repeatedly voiced their concern about the future of large scale public sector demand for PSC services¹⁴ and, given the experience in Iraq and Afghanistan, it is likely that the UK and US government have lost their appetite for the sort of man-power intensive expeditionary operation that would necessitate the large-scale use of PSC services.

Thus, barring another “bubble”, it is likely that the UK PSI with its strong focus on private sector demand will continue to exist in the foreseeable future. Indeed, interviews suggest that the negotiations for the ICoC and the founding of the SCEG have greatly increased cooperation between UK PSCs.¹⁵ This further strengthened the influence of networks in the UK PSI that had not unexpectedly diminished somewhat due to the significant increase of PSC representatives and employees during the “bubble”. However, the above discussion has highlighted an important aspect of the UK PSI: The profit figures cited above clearly show that the provision of PSC services is by no means the lucrative business the PSC literature makes it out to be. This is particularly noteworthy with respect to the prevalent calls for stricter regulation, intrusive monitoring and severe sanctions, as such regulation would impose a significant additional burden on UK PSCs. Should this additional burden be imposed on a UK PSC that is already in a precarious financial situation, it may encourage the very behaviour it seeks to avert: The PSC in question would find itself in a situation in which engaging in problematic behaviour may seem like its only chance of assuring short-term corporate survival.

¹³ CRG (no year), CRG (2008 II), p. 8, CRG (2009), p. 8. See also Thompson (2008), Beese (2011).

¹⁴ Clissitt (2010), Phillips (2010), Claridge (2010), Beese (2011), Toyne-Sewell (2011). See also Bill Waite in Spear’s Wealth Management Survey (2008 III).

¹⁵ Phillips (2010), Toyne-Sewell (2011).

Section Four: Choice of Data and Supporting Literature

Finally, Part II concludes by critically reviewing the thesis' methodology, specifically its choice of data and supporting literature. Specifically, this section aims to illustrate the rationale underlying the thesis' choice of foci and highlight issues that emerged in the course of the research that it would have ideally done differently.

Choice of Data

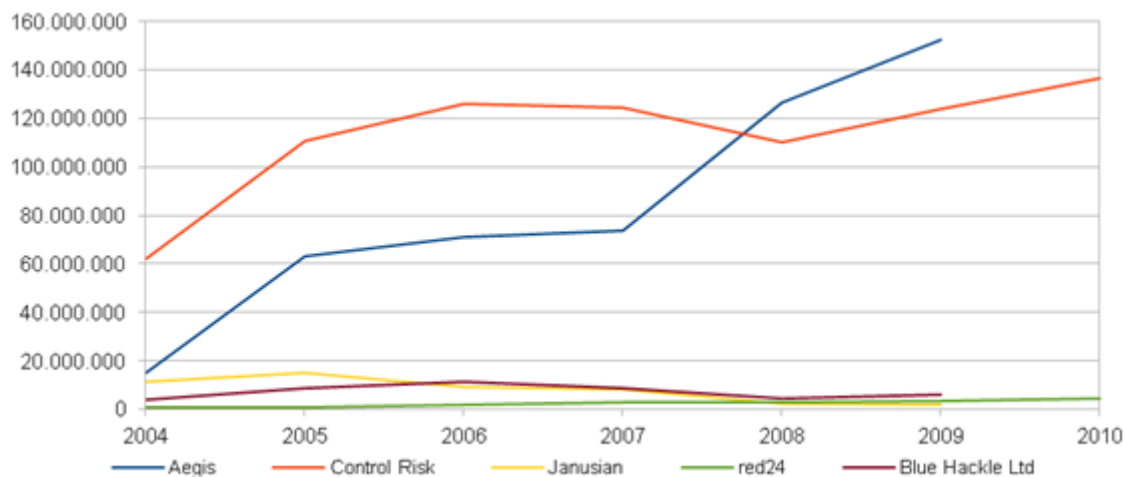
In its choice of data, the thesis greatly relied on interviews, especially compared to its use of UK PSCs' annual reports. One reason for this imbalance is the fact that corporate reports are often not or only partially available.¹⁶ Given that many UK PSCs are incorporated overseas, they publish only limited information about their business.¹⁷ Moreover, PSCs often claim the status of a small business to file only abbreviated accounts.¹⁸ Thus, the data from PSCs' corporate reports may at times provide an incomplete and distorted picture of the UK PSI. Said data also often lack context. For instance, A UK PSC may post a significant loss because its business is failing or said loss may be due to a one-off investment, while the overall company prospers. Even if a company turn a profit, this says little about its market-position. As Figure 7-1 shows, *CRG* has remained profitable between 2004 and 2010. However, given its turnover (see Figure 7-2), its return on investment has deteriorated from bad to worse, while *red24* earned a much better return on investment, despite turning a far smaller profit. Thus, while a greater balance between corporate reports and interview data would have been desirable, the necessary data to achieve it were not available. However, the data included in the corporate reports proved invaluable during interviews. Not only did it provide an additional means of triangulating interview data, it also helped in overcoming PSC representatives' initial concerns to discuss their company's or competitors' business performance. Being able to show that such data, however incomplete, were already publicly available would elicit a much more open attitude from most interviewees.

¹⁶ A request for Drum Cussac's annual reports in Jersey yielded a one page document detailing nothing but the number of shares the company has given out (Drum Cussac (2011)).

¹⁷ Even when companies publishes extensive information, e.g. *CRG* and *Aegis*, they exclude their off-shore subsidiaries, leaving an incomplete picture of their activities.

¹⁸ See Erinys Ltd. (2010), Hart Security UK Limited (2005).

Figure 7-2: Revenue for Select UK PSCs from 2004-2010 in GBP



Likewise, a greater balance would have been desirable within the interview data, which favour PSCs representatives over their employees and clients. Unfortunately, the response rate among PSC employees and clients was even lower than that for PSC representatives and snowballing proved to be far less effective when it comes to PSC employees and clients, largely because PSC representatives were unwilling to initiate such contacts. As noted in Chapter One, this thesis compensated for the relatively low number of interviews with PSC employees by interviewing “information nodes”, i.e. PSC employees that maintain a blog or newsgroup and thus could reflect the views of their audience as well as their own.¹⁹ Likewise, PSC client interviews focused on “information nodes” in the form of insurance providers, who are often a go-between for PSCs and their clients and can thus channel the latter’s views. Interviewing such “nodes” is an imperfect solution, as it is at times difficult to distinguish between the interviewee’s own views and those of PSC employees/clients in general. One way to overcome this problem may be to focus more on the *LinkedIn* and *Facebook* groups that PSC employees and clients have recently started to use to initiate contact and possibly even conduct interviews.²⁰

Choice of Focus and Supporting Literature

While the central aspects of this thesis - the interests and institutions within PSCs, the nature and intensity of competition and the relationship between PSCs and their clients - constitute important contextual influences on PSC decision-making, they are not a holistic

¹⁹ Chapter 1 Section 8.

²⁰ Thompson (2011). The use of social media to conduct interviews is also something that one may wish to keep in mind when designing interviews and contemplating research ethics.

representation of the market ecology in the UK PSI. Instead, this thesis chose to focus on certain aspects of the market ecology in which UK companies are embedded. As Chapter One noted, this choice of focus was in part inspired by early interviews with PSC representatives, employees and clients, in whose descriptions of the PSI concepts like professionalism, competition, networks and power featured prominently. Moreover, professionalism, competition and the P/A problem also feature prominently in the PSC literature and, thus, offered a useful point of departure to analyse UK PSC behaviour. However, other concepts that featured less frequently in interviews, that only came up later in the thesis' progression or that had no obvious link to the PSC literature necessarily had to be set aside. Indeed, Part IV of this conclusion will pick up on these concepts when it discusses avenues for future research.

Moreover, the thesis' research question and intended audience also determined the method by which to approach the concepts identified in interviews and the PSC literature. Here, the thesis drew not only on economic-sociology to understand PSC behaviour, but also on traditional economic analysis, e.g. in the discussion about PSC employees' interests and the analysis of competition in the PSI, and sociological analysis, i.e. the study of professions. By doing so, it showed that the two are not only compatible, but that they can complement one another. After all, while economic and non-economic behaviour can temporarily dominate PSC behaviour,²¹ neither discipline can fully account for PSC behaviour on its own. However, the emphasis on the "embeddedness" of PSCs' economic actions in their social context does not obviate the need for purely economic or sociological analysis of PSCs and their behaviour.²² If anything, this thesis repeatedly highlighted the need for a more thorough engagement with economic and sociological concepts in the analysis of security privatization.

Implications of the Thesis' Use of Sociological and Economic Concepts

Indeed, one constraint of the thesis is that it is limited to describing the effect of economic and sociological concepts, such as competitive pressure and embeddedness, on the behaviour of PSCs and contributes few new insights to the understanding of these concepts within their respective fields. Partly, this limitation is a function of the available data and

²¹ See the bell-curve model of competition in Chapter 1 Section 6, Chapter 4 Section 3.

²² Chapter 2 Section 9.

how it was generated. To make a genuine contribution to the field of sociology, for example by describing how networks among PSC employees and organizational structures within UK PSCs evolve, the sample would have to contain a larger number of PSC employees and, more importantly, a significant part of the interview would have had to address these issues. Likewise, a contribution to the field of economics/management studies, e.g. by analysing pricing and strategy development in the UK PSI, would have required a different emphasis in the interview sample and a different approach to the interviews themselves. Such a shift in emphasis and approach to the interviews would have been incompatible with the scope of the thesis as set out by the research question. Rather than describing PSC behaviour from an industry perspective, a narrower focus would be needed that focuses, for example, exclusively on networks in the PSI. Moreover, an in-depth engagement with the respective discussions in the fields of sociology and economics/management studies also seems ill-advised given the thesis' intended audience, i.e. the PSC literature.

That being said, further inquiry into how military professionalism travels beyond the military into the PSI is but one example of how the understanding of embeddedness and corporate culture and thus the field of sociology may benefit from a more thorough engagement with the PSI. Indeed, Section 6 of this conclusion will discuss what form further research aimed at making a genuine contribution to the fields of sociology and economics/management studies may take and what results it may yield.

Section Five: Regulatory Implications

Chapter Six showed that prevalent regulatory proposals favour strict regulation, intrusive monitoring and severe sanctions and it showed that the costs of such a regulatory system, both for the regulator as well as for PSCs, receives relatively little attention in the PSC literature. This inattention to the costs of regulation is attributable to the literature's view of PSC regulation as a zero-sum game with high stakes: Unless every aspect of their behaviour is tightly controlled, PSCs will exploit any regulatory leniency to engage in misconduct. Moreover, even significant regulatory costs are deemed acceptable, given the likelihood and significant potential costs of regulatory failure.²³ Chapter Six criticized this approach to PSC regulation, but it limited its criticism to highlighting how this approach to regulation misjudges the relative merits of international, domestic and, especially, informal regulation²⁴ and how it is prone to under-/over-regulation.²⁵ In essence, Chapter Six mainly argued that the prevalent regulatory proposal is wasteful, not necessarily that it is ineffective.

An Alternative View on Antagonistic Regulation

In contrast, the alternative behavioural model provides a vastly more powerful argument against any such antagonistic regulation. First of all, if PSCs are, indeed, more likely to cooperate than to shirk, antagonistic regulation as outlined above is wasteful from the regulator's point of view: The regulator has to bear the considerable costs of imposing strict and intrusive regulation of PSCs, which are in no way justified by averting misconduct, as said misconduct would not have occurred in the first place. Likewise, PSCs have to bear considerable compliance costs, which shrink their profit margins, but which are equally wasteful in most instances, as the PSCs in question would have preferred cooperation over shirking in any case. Here, the first outright problematic implication of the aforementioned antagonistic approach becomes visible: The increased compliance costs may push some PSCs into a situation where shirking may seem like the only way to assure their short-term corporate survival. Moreover, analogue to the problem of false punishments in PSC client relations that was discussed in Chapter Five,²⁶ this antagonistic regulatory approach may even be harmful, for instance, when problematic behaviour occurs despite, rather than because of a PSC's best effort. However, it is the response in the market for PSC services that

²³ Chapter 6 Conclusion Part I.

²⁴ Chapter 6 Section 7-9.

²⁵ Chapter 6 Section 10.

²⁶ Chapter 5 Section 5.

such antagonistic regulation would elicit that causes it to be particularly problematic. Increased compliance costs and the risk of false punishments would force most PSCs, i.e. those that would cooperate rather than shirk, out of the market. Only for PSCs, whose frequent shirking would off-set the high costs of compliance and of false punishments, would it be lucrative to remain in the market.

Thus, an antagonistic approach to PSC regulation risks the very behaviour it sets out to stop. Indeed, LeGrand describes a similar conundrum in his seminal work *Motivation, Agency, and Public Policy* in terms of “knights” and “knaves”: If regulation is crafted under the assumption that those to be regulated are all knaves, i.e. purely self-interested actors, rather than knights, i.e. altruistic actors, it is rational for knights to adopt knavish behaviour.²⁷ ‘If people are treated as though they need to be whipped to achieve results, then they may behave as though they do need to be [whipped]’.²⁸ Fortunately, the alternative behavioural model suggests several ways in which policy-makers and, more importantly, clients can control PSC behaviour short of “cracking the whip”.

Implications for Policy-Makers

Possibly the most important implication of the discussion above for policy-makers is to acknowledge the impotence of strict formal regulation. However, while the costs and difficulties in enacting and implementing such regulation are widely acknowledged,²⁹ the risk of “false punishments” and their detrimental effect on the market for PSC services has yet to be recognized. Faced with mounting public pressure to act, policy-makers may not be able to avoid enacting such strict regulation. However, the threat that further scandals could trigger an antagonistic regulatory response could provide PSCs with an additional incentive to engage in effective self-regulation.

Moreover, regulators should do their utmost to avoid false punishments, for example, by providing PSCs with incentives to come forward in cases of unintentional problematic behaviour. Such incentives could even include anonymity and an exemption from punishment. Chapter Two further suggested that regulators could use their conflict of interest to play PSCs off against their employees and *vice versa*. This would require lines of

²⁷ LeGrand (2003), p. 13ff, LeGrand (1997), p. 162. Indeed, a number of scholars struggle with this problem (see Ayres/Braithwaite (1992), p. 22ff).

²⁸ LeGrand (2003), p. 103.

²⁹ See Chapter 6 Section 7 and 8.

contact to PSC employees independent of their employer as well as further incentives.³⁰ Such lines of communication could be established through mandatory training courses for government contracts.

To avoid that PSCs engaging in shirking as a last resort, policy-makers could create a bail-out facility that would allow PSCs to extract themselves from a situation that would otherwise have required them to shirk to assure their short-term survival. Moreover, Chapter Four further recommended the creation of a substitute that would replace PSCs with a in the short-term, should their behaviour become problematic.³¹

Finally, Chapter Five suggested that trust between contractual parties plays a crucial role in a PSC's determination whether to shirk or to cooperate: High trust makes cooperation likely, while low trust suggests shirking.³² While trust is primarily a matter between the contractual parties, there are several ways in which policy-makers can encourage "socially-oriented" trust. For instance, Chapter Three suggested that greater recognition of the PSI's expertise in providing security services by the military could strengthen military professionalism in the PSI, which, in turn, could foster greater between PSCs and their clients.³³ Discussions in Chapter Five and Six further suggest that public support for networks in the PSI, for example among PSC clients, and for collective self-regulation could likewise greatly bolster trust.³⁴

The suggestions above are not fully fledged policy proposals. Further research is needed to assure that these proposals fulfil their intended function as suggested without bringing about the sort of unintended consequences that cause the antagonistic regulatory approach to be so problematic. Instead, these example are meant to show that policy-makers have a wealth of options at their disposal to influence PSC behaviour without resorting to the strict, formal regulatory proposals that the PSC literature seems to favour.

Implications for PSC Clients

The alternative behavioural model arguably awards an even more crucial role to their clients than to policy-makers when it comes to influencing PSC behaviour. Through their contractual

³⁰ One possibility would be a Martin Act, i.e. an arrangement under which a whistle-blower is awarded part of the money that is recovered as a result of his actions (Stieglitz (2009), p. 20-21). Chapter 4 Section 7 further suggested support for organized labour in the PSI, but assessed the chances of its success to be slim.

³¹ Chapter 4 Section 5.

³² Chapter 5 Section 5.

³³ Chapter 3 Conclusion Part II.

³⁴ Chapter 6 Section 9.

relationship, clients can reduce PSCs' uncertainty and generate trust, while just as easily sanction PSC misconduct – be it by changing their supplier or by taking their contractual partner to court.³⁵ As Chapters Four and Five note, the market for PSC services imbues clients with considerable power over “their” PSC³⁶ and their contractual relationship offers them an easy means to bring said power to bear in order to influence PSC behaviour.

One way in which clients, especially in the public sector, limit their ability to influence PSC behaviour is through their pursuit of “one-stop solutions”, i.e. the tendency to concentrate contracting on a single providers. A 2009 SIGIR report, for example, notes that the DoS ‘originally envisioned using only one PSC to service Iraq for management convenience’.³⁷ “One-stop solutions” are a seemingly neat solution for clients that lack the administrative capacity to manage multiple contracts and it is thus also widely used among private sector customers.³⁸ Moreover, “one-stop solutions” are great sources of self-interested trust, as they promise significant future business. Should a PSC prove to be unreliable or disloyal, however, replacing a “one-stop solution” is often quite difficult, especially for public sector clients, given the size of their contract.³⁹ Likewise, the increasing costs of competing for large government contracts, which Chapter Four highlighted, curbs the ability of public sector clients to control PSC behaviour, because it segments the market for PSC services into two tiers.

Moreover, to influence PSC behaviour effectively, clients have to become much more aware of the market for PSC service. Interviews suggest that, while most private sector clients profess faith in the quality of their contractual management, they lacked a dedicated set of metrics to measure contractor performance.⁴⁰ Rather than constantly monitoring the market, several clients suggested that they rely on personal contacts to evaluate service quality as they need it and Chapter Five already highlighted importance of networks in that respect.⁴¹ Moreover, one interviewee suggested that she considers the “burden of proof”

³⁵ Chapter 6 Section 9.

³⁶ Chapter 4 Section 6.

³⁷ SIGIR (2009 III), p. 11.

³⁸ Donald (2006 II), p. 61, Marshall (2011).

³⁹ The DoS' struggles to replace *Armorgroup* on its Kabul embassy contract are arguably a case in point (Schulmann 2011).

⁴⁰ Marshal (2010), Schenz (2009), Ashwell (2008), Sorge (2009).

⁴¹ Chapter 5 Section 3.

with respect to her contractual partner's performance to lie with the PSC in question.⁴² While this may be problematic from a regulatory point of view, from a management point of view aimed at influencing the behaviour of a contractor, it is fairly unproblematic. Moreover, it neatly connects to an earlier observation in Chapter Five that clients, unlike regulators do not need incontrovertible proof to punish and that their punishment need not be befitting the "crime".⁴³

Again, these implications for clients are not fully developed policy recommendation. Instead, they aim to show that, like policy-makers, clients have ample opportunity to influence PSC behaviour aside from the use of an antagonistic regulatory approach.

Section Six: Avenues for Future Research

This conclusion indicated four ways in which this thesis has made an original contribution to the PSC literature: (1) First and foremost, it provided an innovative conceptualization of PSC behaviour, (2) it suggested a novel way to look at PSC regulation, (3) through the combination of economic and sociological concepts, it applied a new analytical approach to the study of PSCs and (4) it generated original data, i.e. interviews with UK PSC employees and clients, and used previously neglected sources of data, i.e. UK PSCs' annual reports, in its analysis. Crucially, this thesis propagated a new approach to the study of PSCs away from the abstract analysis of PSC behaviour at a distance towards a closer engagement with the available empirical evidence of actual PSC behaviour. This novel approach and the challenge this thesis poses to prevalent notions about PSC behaviour a number of interesting avenues for future research, some of which this section will discuss in greater detail.

Private Security Elsewhere

Earlier, this conclusion expressed confidence that the thesis' broader conceptual claims apply beyond the UK PSI. Of course, this claim has yet to be confirmed by further research and, more importantly, said research also has to determine how regional variations in the internal decision-making processes of PSCs, their competitive environment and their client relations produce different behavioural outcomes for the PSCs in question.

⁴² Marshall (2011).

⁴³ Chapter 5 Section 4 and 5.

One interesting question in that respect is how different types of military professionalism affect the internal decision-making processes of PSCs. Do Chinese or Russian companies face similar influences from their employees as UK PSCs? Also, can different military professionalisms mix in a single company and how does that process take place? Another interesting question would be how contractual situations with multiple principals affect the client relations and, ultimately, the behaviour of PSCs. A possible example for such a situation would be third-party funding for a local development NGOs that use PSC services.⁴⁴ Another interesting question concerns the influence of the informal economy on the market environment PSCs compete in. The Afghan government's decision to ban foreign PSC combined with the prevalence of corruption could, for example, create a situation in which very different dynamics dominate the market for PSC services, while the competitive pressures envisioned in the FFF become secondary concerns. The question implicit in this last point – what are the limits of the proposed behavioural model – should not be considered a detriment to this thesis' findings. Instead, the thesis provides a fundamental challenge to prevalent understandings of PSC behaviour that will produce a wealth of further research and with it a sorely needed emphasis on the economics of PSI – the outcome of which will be a more thorough understanding of what makes PSCs, in the UK and beyond, behave the way they do.

How the thesis' findings can be usefully applied beyond the UK PSI is exemplified by the PSIs in Germany and France. Earlier, this thesis speculated, that the UK PSI may resemble the German and French PSI more closely than the US PSI, because, like the UK government, their respective public sector demand for PSC services is comparatively low.⁴⁵ Market dynamics in their respective PSIs and the client relations of German and French PSCs are likely driven by private sector demand and should therefore be similar to those in the UK PSI. Significant similarities are also likely to come from the fact that many German companies have already used UK PSCs and their notions about service quality are likely to be shaped by said experience.⁴⁶ Finally, similarities in the corporate reporting laws and their respective governments' approach to PSC regulation provide further connections between the UK and German PSI that make it likely that the thesis' findings can be fruitfully applied to its study.

⁴⁴ One interviewee suggested that this practice is fairly common in Afghanistan (Donn (2011)).

⁴⁵ See Chapter 1, Section 10.

⁴⁶ (Stoppelkamp (2009)).

However, the thesis' findings need to be limited to the German and French PSIs, but may be partially applicable to the US PSI as well, despite the aforementioned focus of US PSCs on public sector demand. US private sector demand for PSC services has so far received little attention, except for those companies that served as prime contractors in Iraq and Afghanistan in the context of the respective reconstruction missions. Given the high number of US multinational companies that operate globally and the robust corporate social responsibility regulation in the USA, there could be substantial private sector demand for PSC services in the USA.⁴⁷ Further research into US private sector demand for PSC services may well show that the market environment and client relations it creates are fairly similar to those in the UK PSI. Crucially, such a discovery would suggest that the US government demand for PSC services, which continues to dominate the debate in the PSC literature, is quite exceptional and has very little in common with the use of PSCs elsewhere.⁴⁸

The discussion above shows that, despite its narrow focus, there is ample reason to suggest that the thesis' findings can be extended beyond its narrow focus on the UK PSI. So far, this section has focused on the avenues for further research that a widening of the thesis' geographical scope may open up. Throughout the remainder, avenues for future research concerning conceptual issues, specifically organizational structure, regulation and professionalism, will be discussed.

Organizational Structures

This thesis' emphasis on decision-making processes in individual PSCs provides renewed interest in an aspect of the PSI that has received scant attention to date: the analysis of organizational structures in the PSI. What little research there is, notably Kinsey's 2005 article, has been limited to senior management's perspective on the relative merits of various organizational forms. However, given the aforementioned differences in motivation between PSC representatives and employees, a broader appreciation for the organizational structure of PSCs seems in order. This echoes an earlier criticism, namely the need to look inside, rather than at PSCs to understand their behaviour. So far, the assumption seems to

⁴⁷ Anecdotal evidence suggests that this demand is not served by those US PSCs that feature prominently in the PSC literature. In the aforementioned hearing following the Nisoor Square shootings, Congressman Chris Murphy stated that 90% of Blackwater's revenue and profit were paid for by the US taxpayer (Chris Murphy in Democracy Now (2007)).

⁴⁸ This, in turn, would raise the question whether the PSC literature's current reliance on data from the US government's use of PSC is justified, especially in light of its role in informing policy-making processes.

have been that PSCs can enforce their corporate policies without any friction throughout their company. This thesis' emphasis on PSCs as a "coalition of participants" with often divergent interests shines a light on coordination processes within PSCs that have yet to be recognized. Moreover, should UK PSCs continue to, as Kinsey suggests, develop more hierarchical organizational structures to cope with their increasing need for specialization and differentiation,⁴⁹ is there a point at which this approach chafes against the more free-spirited mindset among UK PSC employees?

Beyond Formal and Informal Regulation

Comparisons between Chapter Six's analysis of the debate about PSC regulation and the policy advice developed in the preceding section suggest that the two approaches have fairly little in common beyond a shared desire to control PSC behaviour. An interesting question would be whether the two approaches can be integrated into a coherent whole. For example, can the current, very legalistic and normative debate about PSC regulation incorporate elements that are primarily inspired by the need to manage and thus maintain a PSI client relationship. How, for example, do notions about accountability and transparency fit into a client relationship that relies heavily on mutual trust?

However, the debate above highlights a problem in the discussion about PSC regulation that has yet to be fully recognized. The debate about PSC regulation is completely separate from the contract management debate. Thus, the former can contemplate solutions to regulatory problems with little concern for their impact on, for example, PSI client relation. Especially with respect to the unintended consequences of regulation, e.g. the regulatory burden it puts on PSCs and their clients, this separation is troublesome.

The UK PSI and Professionalism

Finally, an interesting area for further research would be the prospects of professionalism in the UK PSI. Chapter Three provided but a glance at an issue that is so far poorly understood: There are evidently elements of military professionalism in the PSI, but little is known about how knowledge is distributed, let alone developed in PSCs? How are professional disputes adjudicated and how resilient is military professionalism in UK PSCs. The latter question is especially important with respect to the organizational structure questions outline above: Does military professionalism benefit from the move towards a more hierarchical

⁴⁹ Kinsey (2005 II), p. 199ff.

organizational structure or does it wither as a result? Also, what happens if military professionalism does lose its meaning? Again, the UK PSI is an interesting case to consider in this respect, because a fairly large number of PSC employees stay in the industry for an uncharacteristically long time, i.e. in excess of ten years,⁵⁰ and given the UK PSI's relatively long history, a large enough sample to study this issue should be available. Finally, the question how the military and PSCs can co-exist and compete for professional jurisdiction still remains very much an open question.

Implications for Economics/Management Studies and Sociology

Such further research into organizational structures, regulation and professionalism raises the question whether and how the resulting discussion may make a genuine contribution to the understanding of these and other important concepts in economics/management studies and sociology. Earlier, this conclusion argued that its scope, data and intended audience does not permit this thesis to make such a contribution. That being said, the thesis' findings clearly raise a number of interesting questions that may have important reverberations for the understanding of key concepts within sociology. For instance, Chapter Three noted that sociologists generally believe that, to become a member of a profession, applicants have to undergo some form of formal training (doctors, lawyers) or informal apprenticeship (journalists) to teach them the rules of their profession. The UK PSI, however, seems to integrate its members without recourse to such formal or informal mechanisms, which seems to contradict this structural view of professionalism and thus raises questions about the nature of professionalism.⁵¹ Likewise, the thesis poses interesting questions for the field of economics/management studies. One example for this is the aforementioned risk of a "race to the bottom" in the PSI, i.e. a situation in which a lack of information about service quality causes price competition to increase to a point at which the market for PSC services becomes dysfunctional.⁵² Earlier, this thesis suggested that service quality is hard to measure and easily misperceived, because the risk of an attack is essentially unknowable.⁵³ As a result, a high quality provider may be overwhelmed by an exceptionally strong assailant, while a low quality provider may benefit from a lack of attacks or from an incompetent assailant. In the eyes of a customer, the latter may falsely appear more proficient than the

⁵⁰ Toyne-Sewell (2011).

⁵¹ See Chapter 3 Section 7.

⁵² See Chapter 4 Section 7.

⁵³ See Chapter 1 Section 3.

former. This raises the question whether such a lack of information (rather than an information asymmetry) constitutes a market failure and, if so, if this possibly necessitates a broader understanding of market failure in situations where information is scarce.

However, to make genuine contribution to the respective fields of economics/management studies and sociology necessitates a different approach than the one taken in this thesis. Earlier, this Conclusion suggested that a different approach to the process of data generation constitutes one of these necessary changes.⁵⁴ Such a change would not just require a shift in emphasis within the interview, but also a different sample and thus would have to overcome the problems of access and data reliability discussed earlier.⁵⁵ This is not to suggest that these problems are insurmountable, but, to increase the share of PSC employees within the sample, interesting ways in which their participation can be encouraged need to be developed. Another clear example is the extent to which such research would have to engage with the applicable literatures in sociology and economics/management studies. With few exceptions, this thesis limited itself to literature that tries to apply sociological and economic theories and has largely ignored the works upon which said theories are based. A genuine contribution to the understanding of embeddedness within sociology, for example, would require an engagement not just with Granovetter's work on the subject, but also with its roots in Karl Polanyi's *oeuvre*, particularly in *The Great Transformation*. Even on professionalism, where this thesis reaches its most thorough engagement with the applicable literature in sociology, key works, such as Max Weber's writings about professionalism, find little mention. Likewise, a genuine contribution to the field of economics/management studies would require a more in-depth engagement with the applicable literature in the respective fields. In addition to the literature on market failure,⁵⁶ the renewed debate about culture and economics, specifically the writings of George Akerloff and Rachel Kranton, would require some attention if further research would want to make a genuine contribution to economics/management studies. Alternatively, an in-depth

⁵⁴ See Conclusion Section 4.

⁵⁵ See Chapter 1 Section 8.

⁵⁶ Here, an in-depth engagement with Oliver Williamson's work, especially the need for probity as a factor in privatizations, would require greater attention.

engagement with the economic literature on how markets develop may be a suitable point of departure for further research aimed at making such a contribution.⁵⁷

Concluding Thoughts

Cowen argues that ‘contractors do not set the tone but rather reflect the sins and virtues of their customers, namely their sponsoring governments’.⁵⁸ This thesis has shown this notion to be utterly false with respect to the UK PSI. Instead, in the absence of effective regulation, most UK PSCs have conducted themselves remarkably well. Indeed, one may argue that, in light of the various fruitless attempts of the UK government to regulate UK PSCs, starting with the 2002 *Green Paper*, the UK PSI has conducted itself considerably better than its government. It has consistently embraced regulatory initiatives, individually,⁵⁹ through the BAPSC,⁶⁰ the, more recently, as part of the ICoC and the SCEG.⁶¹

Through the conflicts in Iraq and Afghanistan, the PSI has changed significantly and it is yet unclear what direction the market for PSC services will take. Is there sustainable demand near current levels for PSC services in the private sector or will the public sector remain the dominant source of demand it has been since 2003? Will the UK PSI, in particular, continue its shift away from the provision of PSC services, i.e. armed personal, perimeter and convoy security in high risk environments, or will a renewed need for such services emerge as a result of the *Arab Spring*. Possibly the UK PSI is facing an “Age of Turbulence” in which a clear paradigm to describe its work does not emerge, as UK PSCs pursue a diverse set of business activities.

As a result, what is now described as the UK PSI may fragment into various smaller groups – a development that the increasing number of UK PSCs relocating overseas seems to presage in a worrying manner. Such a development would complicate government intervention into industry matters considerably. Indeed, the UK PSCs ability to influence PSC behaviour, to strengthen its ties and to retain the close relationship it currently enjoys is, therefore, by no means assured and should not go unused. Greater cooperation with the aim of engendering mutual trust, based on a thorough understanding of what motivates PSCs is therefore

⁵⁷ Douglass North oeuvre seems very relevant in that respect.

⁵⁸ Cowen (2007). Cowen actual words are ‘contractors do not set the tone but rather reflect the sins and virtues of their customers, namely their sponsoring governments’.

⁵⁹ Beese (2004), Westropp (2004).

⁶⁰ Schulz (2007).

⁶¹ Toyne-Sewell (2011). The largest number of signatory companies to the ICoC comes from the UK.

greatly needed. It is with respect to this last aspect that this thesis hopes to have made a contribution.

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Appendix I

DoD PSC Contracting in Iraq, August 2007 – October 2011

Date of Report	Total	US Citizen	TCN	Local
September 07 ⁶²	6,068	456	3,987	1,625
December 07	9,952	830	7,590	1,532
March 08	7,259	515	5,061	1,683
June 08	7,704	1,540	4,481	1,683
August 08	7,121	1,359	4,230	1,532
November 08	9,863	823	7,883	1,207
February 09	8,701	727	6,909	1,065
May 09	10,743	502	9,382	859
August 09	13,232	623	11,580	1,029
November 09	11,162	590	8,567	2,005
February 10	9,431	660	7,758	1,013
May 10	11,029	1,027	8,907	1,095
September 10 ⁶³	11,413	1,030	9,699	684
December 10	11,628	1,017	9,713	898
January 11	8,327	791	7,424	112
April 11	9,207	917	7,727	563
July 11	10,414	935	8,839	640
October 11	9,554	844	8,293	417

⁶² The data for 09/07-06/08 is taken from Schwartz (2010), p.22.

⁶³ From 09/2010 onwards, DoD reports no longer distinguish between armed and unarmed PSC employees. The last report that did make said distinction, 05/2010, about 5% of all PSC employees were unarmed.

Appendix II

DoD PSC Contracting in Afghanistan, 08/2007 – 10/2011

Date of Report	Total	US Citizen	TCN	Local
September 07 ⁶⁴	3,152	6	4	3,142
December 07	2,998	19	30	2,949
March 08	2,986	32	72	2,882
June 08	3,537	5	15	3,517
August 08	3,206	5	0	3,205
November 08	3,144	4	20	3,120
February 09	3,184	12	18	3,154
May 09	4,111	16	25	4,070
August 09	5,165	13	257	4,895
November 09	10,712	71	1,002	9,639
February 10	13,717	108	389	13,220
May 10	16,398	137	960	15,301
September 10 ⁶⁵	17,932	152	1,093	16,687
December 10	18,869	197	858	17,814
January 11	18,919	250	731	17,938
April 11	18,971	250	732	17,989
July 11	15,305	693	1,282	13,330
October 11	21,544	603	948	19,993

⁶⁴ The data for 09/07-06/08 is taken from Schwartz (2010), p.22.

⁶⁵ From 09/2010 onwards, DoD reports no longer distinguish between armed and unarmed PSC employees. The last report that did make said distinction, 05/2010, about 2% of all PSC employees were unarmed.